NOVA SCOTIA

Environment and Labour

# Reference Guide To The

# OCCUPATIONAL HEALTH AND SAFETY ACT

Produced by the

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The commentary found in this document is not intended to be an exhaustive interpretation or to constitute legal advice to members of the public. This document is prepared for convenience only, and for accurate reference, the reader should see the official volumes of the legislation.

# REFERENCE GUIDE TO THE OCCUPATIONAL HEALTH AND SAFETY ACT

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Be it enacted by the Governor and Assembly as follows:

**Title**

**1** This Act may be cited as the *Occupational Health and Safety Act*.

**Internal Responsibility System**

2 The foundation of this Act is the Internal Responsibility System which

(a) is based on the principle that
(i) employers, contractors, constructors, employees and self-employed persons at a workplace, and
(ii) the owner of a workplace, a supplier of goods or provider of an occupational health or safety service to a workplace or an architect or professional engineer, all of whom can affect the health and safety of persons at the workplace,
share the responsibility for the health and safety of persons at the workplace;

(b) assumes that the primary responsibility for creating and maintaining a safe and healthy workplace should be that of each of these parties, to the extent of each party's authority and ability to do so;

(c) includes a framework for participation, transfer of information and refusal of unsafe work, all of which are necessary for the parties to carry out their responsibilities pursuant to this Act and the regulations; and

(d) is supplemented by the role of the Occupational Health and Safety Division of the Department of Labour, which is not to assume responsibility for creating and maintaining safe and healthy workplaces, but to establish and clarify the responsibilities of the parties under the law, to support them in carrying out their responsibilities and to intervene appropriately when those responsibilities are not carried out.

The Act provides for a definition of the Internal Responsibility System as an overall philosophy for the interpretation of the legislation. The section was added to the Act to clarify the meaning of the Internal Responsibility System. It spells out the principles of the system so that there is less confusion as to what the system represents. May 31, 1997

Section Two asserts that each party is responsible to the extent of their authority and ability. For example, a worker must ensure the tools used are safe, an owner must ensure the building ventilation system is healthy and an employer must ensure the machinery used in the workplace is safe. May 31, 1997

**Interpretation**

3 In this Act,

(a) "aggrieved person" means an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer or union at a workplace who is directly affected by an order or decision;

Everyone noted as an aggrieved party has responsibilities under the Act and, as such, can appeal a decision that directly affects them. Also, a union is the legally recognized agent for the employees in a unionized workplace. It has the right to appeal a decision that may affect one or more employees. May 31, 1997. An aggrieved person includes a union which may be acting on behalf of a specified and named employee or employees at a workplace. The Act in some cases will require the identification of a specific employee. In Sections 45 and 46 complaints, the Act requires that an employee have the belief that they were adversely affected with respect to terms and conditions of employment or any opportunity for employment or promotion. The union has the right to act as an agent in a discriminatory action complaint to the extent they may file the claim and support the employee through the process. In order for a discriminatory action complaint, filed by a union, to be investigated to a conclusion, the specific employee on whose behalf the union is acting, must have formed the belief they would have been subjected to discriminatory action and the specific employee would need to cooperate with the investigating officer and sign a written complaint. (July 20, 2001)

(b) "analyst" means a person appointed as an analyst by the Minister pursuant to this Act;

(c) "appeal panel" means an appeal panel designated pursuant to this Act;

(d) "committee" means a joint occupational health and safety committee established pursuant to this Act;

(e) "compliance notice" means a response, in writing, to an order of an officer, describing the extent to which the person against whom the order was made has complied with each item identified in the order;

(f) "constructor" means a person who contracts for work on a project or who undertakes work on a project himself or herself;

On construction projects there are contractual relationships - a general contractor will hire a sub-contractor to do the electrical work, a sub-contractor will contract for the supply of concrete or the owner may contract with a engineering firm to ensure the

(g) "contractor" means a person who contracts

for work to be performed at the premises of the person contracting to have the work performed, but does not include a dependent contractor or a constructor;

(h) "contracts for work" includes contracting to perform work and contracting to have work performed;

project meets certain standards. The parties to the contract are constructors under the Act. May 31, 1997

In all these circumstances, two parties have agreed to a contract, but there is no employer-employee relationship. However, where each party has employees on a project, the other party has a duty to ensure the safety and health of those employees. May 31, 1997

In a non-construction setting (ie.- mining, forestry, hospitals, factories), there are similar contracts between parties where there is no employee-employer relationship. For example, a temporary service supplies clerical support to a government office, a photocopy repairperson works at the hospital to maintain the photocopiers or a window cleaner is contracted to clean the windows of a factory. In these examples the parties to the contract are contractors for the purpose of the Act. May 31, 1997

As with construction projects, the parties to the contract have certain duties under the Act to ensure the health and safety of the employees of the other party. The contractor will be aware of safety and health hazards of which the other party may not be aware. Providing such information and ensuring the hazards are addressed are important duties under the Act. May 31, 1997

(i) "Council" means the Occupational Health and Safety Advisory Council established pursuant to this Act;

(j) "dependent contractor" means a person, whether or not employed under a contract of employment and whether or not furnishing the person's own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another on such terms and conditions that the person is

A dependant contractor is a person that is technically not an employee of a company, but is dependant on the company for the vast majority of the work done and, therefore, is considered to be the equivalent of an employee. An example is a truck driver who owns his own vehicle but does all of the work for a specific company. The truck driver is dependant on the company and, therefore, is considered to be a dependant contractor. May 31, 1997

(i) in a position of economic dependence upon the other,

(ii) under an obligation to perform duties mainly for the other, and

(iii) in a relationship with the other more

closely resembling that of an employee than an independent contractor;

(k) "Deputy Minister of Labour" includes a person designated by the Deputy Minister of Labour to act in the stead of the Deputy Minister;

(l) "Director" means the Executive Director of Occupational Health and Safety or any person designated by the Director pursuant to this Act to act on behalf of the Director;

(m) "Director of Labour Standards" means the Director of Labour Standards under the *Labour Standards Code*;

(n) "Division" means the Occupational Health and Safety Division of the Department of Labour;

(o) "employee" means a person who is employed to do work and includes a dependent contractor;

The term "employee" includes clients of vocational and day service centres who are paid for work they perform there. 2 May 1998

Supervisors and foremen are considered to be employees for all intents and purposes. March 18, 2004

For a discussion of whether volunteers are employees, see Appendix D. 2 May 1998

(p) "employer" means a person who employs one or more employees or contracts for the services of one or more employees, and includes a constructor, contractor or subcontractor;

(q) "former Act" means Chapter 320 of the Revised Statutes, 1989, the *Occupational Health and Safety Act*;

(r) "Labour Standards Tribunal" means the Labour Standards Tribunal under the *Labour Standards Code*;

(s) "Minister" means the Minister of Labour;

(t) "occupation" means any employment, business, calling or pursuit;

(u) "officer" means an occupational health and safety officer appointed pursuant to this Act and includes the Director;

(v) "owner" includes a trustee, receiver, mortgagee in possession, tenant, lessee or occupier of lands or premises used as a workplace and a person who acts for, or on behalf of, an owner as an agent or delegate;

(w) "police officer" means

(i) a member of the Royal Canadian Mounted Police, or

(ii) a member or chief officer of a police force appointed pursuant to Section 14 or 17 of the *Police Act*;

(x) "policy" means an occupational health and safety policy made pursuant to this Act;

(y) "practicable" means possible, given current knowledge, technology and invention;

(z) "program" means an occupational health and safety program required pursuant to this Act, unless the context otherwise requires;

(aa) "project" means a construction project, and includes

(i) the construction, erection, excavation, renovation, repair, alteration or demolition of any structure, building, tunnel or work and the preparatory work of land clearing or earth moving, and

(ii) work of any nature or kind designated by the Director as a project;

Technical examination, inspection, and photography of building structures by themselves (i.e. not associated with a construction project) do not meet the definition of "project" and should not be considered projects. February 8, 2000.

(ab) "reasonably practicable" means practicable unless the person on whom a duty is placed can show that there is a gross disproportion between the benefit of the duty and the cost, in time, trouble and money, of the measures to secure the duty;

Reasonably practicable is used in the Act as a test as to when compliance will be required. In certain circumstances, a party may not have to comply with a requirement if the cost of compliance is prohibitive and the cost outweighs the benefit. If the Act is to allow a party to not comply with a requirement, the onus must be on the party wishing to be exempt to prove the cost is prohibitive. Also, if a party wishes to use this exemption, for the sake of the safety and health of the employees, the prohibitive cost must

greatly outweigh the benefits to the workers. The employer or other party must prove that all of the costs are prohibitive (ie.- time, trouble and money).1 June 1998.

(ac) "regularly employed" includes seasonal employment with a predictably recurring period of employment that exceeds four weeks, unless otherwise established by regulation or ordered by an officer;

To be regularly employed, a person must be employed for greater than four consecutive weeks. The employee can be part time, full time or a casual employee. An example is the fish plant with only a few employees for most of the year, but hundreds of employees for several weeks. If this is a regular pattern on an annual basis, the employees who work for more than four weeks a year are considered regularly employed. An employee is considered to be full time where the employee works more than 30 hours per week on a regular basis. May 31, 1997.

(ad) "representative" means a health and safety representative selected pursuant to this Act;

(ae) "self-employed person" means a person who is engaged in an occupation on that person's own behalf but does not include a dependent contractor;

(af) "supplier" means a person who manufactures, supplies, sells, leases, distributes or installs any tool, equipment, machine or device or any biological, chemical or physical agent to be used by an employee;

A person building items, machines, devices, equipment, etc. on a 'backyard' basis and selling or making them available to a workplace is considered to be a "supplier" under this Act. (July 20, 2001)

(ag) "union" includes a trade union as defined in the *Trade Union Act* that has the status of bargaining agent under that Act in respect of any bargaining unit at a workplace, and includes an organization representing employees where the organization has exclusive bargaining rights under any other Act in respect of the employees;

(ah) "workplace" means any place where an employee is or is likely to be engaged in any occupation and includes any vehicle or mobile equipment used or likely to be used by an employee in an occupation.

The definition of workplace includes vehicles, whether owned by the employer or supplied by the employee. Thus, the employer should be held accountable to take all reasonable precautions related to the condition of the employee's vehicle and the manner in which the employee drives while on employer business. 1 May 1998.

A workplace exists only where an employee is or is likely to be engaged in an occupation. Once a worker completes the work and leaves, the location no longer falls into the workplace definition and the general duty to ensure the health and safety of persons at or near a workplace no longer applies (October 10, 2003)

## APPLICATION AND ADMINISTRATION

### Application of Act

4 (1) This Act binds Her Majesty in right of the Province.

(2) This Act applies to

(a) every agency of the Government of the Province; and

(b) all matters within the legislative jurisdiction of the Province.

(3) To the extent that Her Majesty in right of Canada submits, this Act binds Her Majesty in right of Canada, every agency of the Government of Canada and every other person whose workplace health and safety standards are ordinarily within the legislative jurisdiction of the Parliament of Canada.

The legislation applies to all matters covered by the jurisdiction of the province. May 31, 1997.

For a discussion of Department of Environment and Labour jurisdiction see Appendix B. May 31, 1997.

The scope of the Act applies only to workplaces and products used in workplaces; products used by the general population are not covered by the Act (October 10, 2003)

**Conflict with other enactments**

**5** Notwithstanding any general or special Act, where there is a conflict between this Act and the regulations and any other enactment, this Act and the regulations prevail.

**Potential Conflict With Police Act**
The Police Act governs some aspects of police operations. However, provincially regulated police are also covered by the OH&S Act and must abide by its provisions. May 1, 1997

There is no obvious conflict between the two statutes. However, in the event that one emerges, section 5 of the OH&S Act would prevail to make the OH&S provision paramount over the conflicting Police Act provision. May 1, 1997

Note that RCMP, Ports Canada Police, Military Police and similar federally regulated law enforcement agencies are not covered by either act. May 1, 1997

**Supervision and management of Act**

**6** The Minister has the general supervision and management of this Act and the regulations.

**Research, Programs and Activities**

7 The Minister may undertake research, programs and activities to promote occupational health and safety and may undertake such programs in co-operation with the Government of Canada or of any other province of Canada or with any person or organization undertaking similar programs.

**Continuation of Division**

**8** The Occupational Health and Safety Division of the Department of Labour, established by the former Act, is hereby continued.

**Functions of Division**

**9** The Division shall

(a) be concerned with occupational health and safety and the maintenance of reasonable standards for the protection of the health and safety of employees and self-employed persons;

(b) either alone or in conjunction with the Workers' Compensation Board, the Department of Health or other departments and agencies, prepare and maintain statistics and information relating to employees and self-employed persons;

(c) provide assistance to persons concerned with occupational health and safety and provide services to assist joint occupational health and safety committees, health and safety representatives, employers, employees and self-employed persons in maintaining reasonable standards for the protection of the health and safety of employees and self-employed persons;

(d) promote or conduct studies and research projects in the field of occupational health and safety;

(e) encourage and conduct educational programs to promote occupational health and safety;

(f) annually, submit to the Advisory Council a report on a review of this Act; and

(g) perform such other functions as the Minister or the Governor in Council may direct.

Though the Act states that it applies to any person at or near a workplace, the main focus of the Department of Labour is to address the health and safety of employees in a workplace. May 31, 1997.

**Payment from Accident Fund**

**10** Part of the costs of the Division pursuant to this Act and the regulations and costs of education and research related to occupational health and safety shall be paid out of the Accident Fund by the Workers' Compensation Board as determined by the Governor in Council.

**Executive Director and other personnel**

**11 (1)** There shall be appointed in accordance with the *Civil Service Act* an Executive Director of Occupational Health and Safety and such officers and employees as are necessary for the administration and enforcement of this Act and the regulations.

**(2)** Notwithstanding subsection (1), the Minister may appoint officers, to administer and enforce this Act and the regulations, who are employees of

(a) the Government of Canada or an agency thereof;

(b) the government of another province of Canada or an agency thereof;

(c) another department or an agency of the Government;

(d) a municipality within the meaning of the *Municipal Affairs Act* or an agency thereof; or

(e) an agency created by any combination of the governments of this Province, other provinces of Canada or the Government of Canada,

and who work in the field of occupational health and safety.

The new Act allows officers to be appointed from outside the Department of Labour. The criteria is that the officials must be employed by another government agency, including federal, municipal or other provincial agencies and must work in the field of workplace health and safety. May 31, 1997.

**(3)** The Director may, in writing, delegate to any person any of the Director's powers, duties or functions pursuant to this Act and shall, when so delegating, specify the powers, duties or functions to be exercised by the person to whom the Director delegates.

The new Act gives the Director the authority to delegate the powers of the position to another person; however, the Director will not do so prior to consulting with the Minister and Deputy Minister of Environment and Labour. Where authority has been delegated the Director will ensure the appropriate persons are notified. December 5, 2001.

**(4)** Notwithstanding anything contained in this Act, an officer appointed pursuant to subsection (2) shall not exercise the powers, duties and functions the officer has pursuant to this Act in relation to the agency, department or municipality, as the case may be, that employs the officer.

**Designation of inspectors**

**12** The Minister may designate certain officers as inspectors or chief inspectors for the purpose of this Act or any other Act or part thereof that is administered by the Division.

## DUTIES AND PRECAUTIONS

### Employers' precautions and duties

**13 (1)** Every employer shall take every precaution that is reasonable in the circumstances to

Key to the Internal Responsibility System is that each party in a workplace that has control has a duty to ensure what they control is safe and healthy to employees and others in the workplace. The previous Act did not recognize all parties who had control in the workplace. The new Act ensures all parties are accountable for their decisions and actions and consider safety and health issues from the very beginning. The field staff of the Occupational Health and Safety Division must do a detailed investigation to ensure proper parties are being identified, whether for orders or prosecution. May 31, 1997.

In some circumstances, the workplace is not controlled by the employer, as the constructor / contractor may be performing repairs or restorations on an existing building or an employer may hire a temporary secretary or contracts for the repairs of a photocopier. In these cases the traditional employer still may be responsible for the safety of that worker, even though that worker is not an employee. May 31, 1997.

Section 13 can be used against a Constructor when dealing with the Constructor's own employees. When dealing with employees of other companies (i.e. the Constructor is the General Contractor), the Constructor section should be used. February 8, 2000.

(a) ensure the health and safety of persons at or near the workplace;

For a discussion of employer responsibilities to people sentenced to community work, university research technicians and volunteers, see Appendix A. May 31, 1997.

For a discussion of employers' responsibilities in work-at-home situations, see Appendix D. May 2, 1998

For a discussion of employer responsibilities for workers obtained from a personnel agency, see Appendix E. May 2, 1998

Standards are often not worded in a manner that makes enforcement straightforward. "Should" has a legal definition similar to advice - **it is not a** mandatory requirement. No order can be written forcing compliance with a standard clause that uses "should" in a substantive section. In cases where officers wish to enforce such a standard , the officer may reproduce the requirements as an order under 13(1)(a) of the Act. Because this is a general duty clause the officer **would be obliged to accept any**

**action that accomplished the same end as the standard would have**. October 29, 2001.

(b) provide and maintain equipment, machines, materials or things that are properly equipped with safety devices;

Provide in the Act is generally meant to be ambiguous. For clause 13(1)(b) , provide means the employer will incur the cost of the equipment. However, personal protective equipment is not to be included within the definition of "equipment" in this clause. Thus, this clause does not require the employer to pay for such personal protective equipment. Such a requirement may be set out in regulation though. May 31, 1997.

(c) provide such information, instruction, training, supervision and facilities as are necessary to the health or safety of the employees;

Supervision and determining whether or not it is adequate will be determined on a case by case basis. The general rule is that there is a supervisor at the workplace during all working hours. However, the workplace is changing and a growing number of workplaces do not have a supervisor at the workplace at all times. In these cases, the employer must demonstrate that there are adequate procedures for contacting a supervisor in an emergency. May 31, 1997.

Most training pay and associated cost issues should be referred to the Labour Standards Division ( if the employee is not unionized) or to the union grievance process. OH&S officers have authority to interpret and apply pay entitlements for employees in the following instances:
-joint occupational health and safety committee or health and safety representative training
-where payment is required by regulation
December 14, 2000

"Certification papers/tickets" are not required unless specifically noted in the Act or the regulations enforced/administered by the OH&S division. Certification may be taken by the officer as supporting evidence for competence; however, caution should be used, as many certificates do not require knowledge updating and a person may not be current. Where there is no OH&S requirement for a certificate the officer will need to determine competence in some other fashion. The officer may look for evidence of years of experience, training given, knowledge of the law, supervision, etc. (July 20 , 2001)

(d) ensure that the employees, and particularly the supervisors and foremen, are made familiar with any health or safety hazards that may be met by them at the workplace;

(e) ensure that the employees are made familiar with the proper use of all devices, equipment and clothing required for their protection; and

(f) conduct the employer's undertaking so that employees are not exposed to health or safety hazards as a result of the undertaking.

In the absence of a specific Threshold Limit Value *for a particular substance under the Occupational* Health Regulations, officers could rely on this section to require control of a hazardous health exposure. In a prosecution of such a case, the officer would be required to produce scientific or medical evidence that the exposure was in fact hazardous in the concentrations and exposure patterns found at the particular workplace. 2 May 1998

Two new employer duties have been imposed relative to the 1986 Act - the duty to provide training for safety committees, if required, and to produce and maintain a safety policy or program, where required. May 31, 1997.

There are no specific requirements or limitations for hours of work; however the general employer duty does apply so that the health and safety of the employee cannot be impacted on due to hours of work or work scheduling (Feb 1, 2004)

(2) Every employer shall

(a) consult and co-operate with the joint occupational health and safety committee, where such a committee has been established at the workplace, or the health and safety representative, where one has been selected at the workplace;

Where the word "consult" or its derivatives appear in the Act or regulations, the word indicates a requirement on the person consulting to **formally** discuss, review and share information relative to the development, implementation and delivery of the subject program. For example, with a training program, there would be an expectation to discuss the details of the training program content, the amount of training, who will be trained, who will deliver the training and how, where and when the training should take place. April 30, 2001.
There must a genuine opportunity for the party being consulted to comment and the comments must be received and considered in good faith. However, there is no obligation on the party doing the consulting to *jointly develop* the program with any other party or to accept any or all of the comments made by the consulted party. April 30, 2001.

(b) co-operate with any person performing a duty imposed or exercising a power conferred by this Act or the regulations;

(c) provide such additional training of committee members as may be prescribed by the regulations;

(d) comply with this Act and the regulations and ensure that employees at the workplace comply with this Act and the regulations; and

(e) where an occupational health and safety policy or occupational health and safety program is required pursuant to this Act or the regulations, establish the policy or program.

**Precautions to be taken by contractors**

**14** Every contractor shall take every precaution that is reasonable in the circumstances to ensure

(a) the health and safety of persons at or near a workplace;

(b) that the activities of the employers and self-employed persons at the workplace are co-ordinated;

(c) communication between the employers and self-employed persons at the workplace of information necessary to the health and safety of persons at the workplace;

(d) that the measures and procedures prescribed pursuant to this Act and the regulations are carried out at the workplace; and

(e) that every employee, self-employed person and employer performing work at the workplace complies with this Act and the regulations.

**Precautions to be taken by constructors**

15 Every constructor shall take every precaution that is reasonable in the circumstances to ensure

(a) the health and safety of persons at or near a project;

(b) that the activities of the employers and self-employed persons at the project are co-ordinated;

(c) communication between the employers and self-employed persons at the project of information necessary to the health and safety of persons at the project, and facilitate communication with any committee or representative required for the project pursuant to this Act or the regulations;

(d) that the measures and procedures prescribed under this Act and the regulations are carried out on the project; and

(e) that every employee, self-employed person and employer performing work in respect of the project complies with this Act and the regulations.

**Precautions to be taken by suppliers**

**16** Every supplier shall take every precaution that is reasonable in the circumstances to

(a) ensure that any device, equipment, machine, material or thing supplied by the supplier is in safe condition, and in compliance with this Act and the regulations when it is supplied;

(b) where it is the supplier's responsibility under a leasing agreement to maintain it, maintain any device, equipment, machine, material or thing in safe condition and in compliance with this Act and the regulations; and

(c) ensure that any biological, chemical or physical agent supplied by the supplier is labelled in accordance with the applicable federal and Provincial regulations.

**Employees' precautions and duties**

**17 (1)** Every employee, while at work, shall

(a) take every reasonable precaution in the circumstances to protect the employee's own health and safety and that of other persons at or near the workplace;

(b) co-operate with the employer and with the employee's fellow employees to protect the employee's own health and safety and that of other persons at or near the workplace;

(c) take every reasonable precaution in the circumstances to ensure that protective devices, equipment or clothing required by the employer, this Act or the regulations are used or worn;

(d) consult and co-operate with the joint occupational health and safety committee, where such a committee has been established at the workplace, or the health and safety representative, where one has been selected at the workplace;

(e) co-operate with any person performing a duty or exercising a power conferred by this Act or the regulations; and

(f) comply with this Act and the regulations.

**(2)** Where an employee believes that any condition, device, equipment, machine, material or thing or any aspect of the workplace is or may be dangerous to the employee's health or safety or that of any other person at the workplace, the employee shall

(a) immediately report it to a supervisor;

(b) where the matter is not remedied to the employee's satisfaction, report it to the committee or the representative, if any; and

(c) where the matter is not remedied to

This complaint investigation differs from a work

the employee's satisfaction after the employee reports in accordance with clauses (a) and (b), report it to the Division.

refusal in that an employee does not have the right to accompany an officer investigating the complaint as they do with the investigation of a refusal (Feb. 1, 2004)

**Self-employed persons' precautions and duties**

**18** Every self-employed person shall

(a) take every reasonable precaution in the circumstances to protect the self-employed person's own health and safety and that of other persons who may be affected by the self-employed person's undertaking;

(b) co-operate with any employer, joint occupational health and safety committee or health and safety representative that may be found at a place at which the self-employed person conducts an undertaking, to protect the self-employed person's own health and safety and that of other persons who may be affected by the undertaking;

(c) co-operate with any person performing a duty or exercising a power conferred by this Act or the regulations; and

(d) comply with this Act and the regulations.

**Owners' precautions and duties**

**19** Every owner shall

(a) take every precaution that is reasonable in the circumstances to provide and maintain the owner's land or premises being or to be used as a workplace

(i) in a manner that ensures the health and safety of persons at or near the workplace, and

(ii) in compliance with this Act and the regulations; and

(b) give to the employer at the workplace the information that is

(i) known to the owner or that the owner could reasonably be expected to know, and

(ii) necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace.

The owner of a premises or land that is used as a workplace must ensure that the premises or land is maintained so as not to be a hazard. The owner must also provide information that is necessary to ensure the workers are not exposed to a hazard. May 31, 1997.

The classic example is the owner of a shopping mall. There are several employers in the mall. However, only the mall owner has the ability to control the ventilation system or ensure the walkways are clear of ice. In this case, the owner has control and, therefore, responsibility. May 31, 1997.

The owner of residential property or a house is not responsible for construction work, unless the owner has actual control of the project. The owner is responsible for maintaining the property and premises and must tell any people contracted to work for the owner of any hazards of which the owner is aware. Given that, in these circumstances, the owner is the person with special information for the protection of workers, the owner must have responsibility under the Act. It should be made clear that the duty applies to the owner of land or premises, not equipment. May 31, 1997.

**Precautions to be taken by providers of service**

**20** Every person or body who, for gain, is a provider of an occupational health or safety service shall take every precaution that is reasonable in the circumstances to

(a) ensure that no person at a workplace is endangered as a result of the provider's activity; and

(b) ensure, where the service involves providing information, that the information provided, at the time that it is provided, is accurate and sufficiently complete to enable the recipient to make a competent judgement on the basis of the information.

Where independent suppliers of occupational health and safety services and advice are retained and the workplace parties rely on their apparent expertise, the supplier is accountable. This applies regardless of whether or not the supplier is a professional (i.e. an engineer or architect). Suppliers must ensure that their service meets an acceptable standard. The test is that a safety trainer, hygienist or other person that is asked to provide a health and safety service or information in the workplace must ensure that advice or service given does not endanger a person in the workplace. The advice given must be competent.
May 31, 1997.

**Precautions to be taken by architects and offence**

**21 (1)** An architect, as defined in the *Architects Act*, who gives advice or affixes the architect's seal to documents or a professional engineer, as defined in the *Engineering Profession Act*, who gives advice or stamps documents shall take every precaution that is reasonable in the circumstances to ensure that a person who is likely to rely on the advice, seal or stamp will not be in contravention of this Act or the regulations as a result of such reliance.

**(2)** Where

(a) an architect, as defined in the *Architects Act*, gives advice or affixes the architect's seal to documents; or

(b) a professional engineer, as defined in the *Engineering Profession Act*, gives advice or stamps documents,

negligently or incompetently and a person at a workplace is endangered thereby, the architect or professional engineer contravenes this Act.

**Required instruction in principles**

**22** The curricula of

(a) a trade school or home study course within the meaning of the *Trade Schools Regulation Act*;

(b) a program of instruction within the meaning of the *Community Colleges Act*; and

(c) any other educational institution or class of educational institution designated pursuant to the regulations,

shall include instruction in the principles of occupational health and safety contained in this Act.

If a school required to provide a course does not, the provisions of the Act will be enforced like any other provision. May 31, 1997.

The instruction noted above can be taught as part of another course and does not have to be a separate course. May 31, 1997.

**Nature and extent of duties and requirements**

**23 (1)** A specific duty or requirement imposed by this Act or the regulations does not limit the generality of any other duty or requirement imposed by this Act or the regulations.

**(2)** Where a provision of this Act or the regulations imposes a duty or requirement on more than one person, the duty or requirement is meant to be imposed primarily on the person with the greatest degree of control over the matters that are the subject of the duty or requirement.

**(3)** Notwithstanding subsection (2), but subject to subsection (5), where the person with the greatest degree of control fails to comply with a duty or requirement referred to in subsection (2), the other person or persons on whom the duty or requirement lies shall, where possible, comply with the provision.

**(4)** Where the person with the greatest degree of control complies with a provision described in subsection (2), the other persons are relieved of the obligation to comply with the provision only

(a) for the time during which the person with the greatest degree of control is in compliance with the provision;

(b) where simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense; and

(c) where the health and safety of persons at the workplace is not put at risk by compliance by only one person.

**(5)** Where the person with the greatest degree of control fails to comply with a provision described in subsection (2) but one of the other persons on whom the duty or requirement is imposed complies with the provision, the other persons, if any, to whom the provision applies are relieved of the obligation to comply with the provision in the circumstances set out in clauses 4(a) to (c) with the necessary modifications.

The purpose of Section 23 is twofold. First, all parties with some level of control in a workplace are responsible for ensuring the health and safety of workers and others at the workplace. However, where more than one party is able to ensure a healthy and safe environment, the party with the greatest degree of control will be primarily accountable. May 31, 1997.

The other parties in a workplace must also comply with a duty imposed upon them. However, where the party with greater control has complied and

(a) compliance by that party continues;

(b) compliance by others would result in unnecessary duplication; and

(c) there is no risk to health or safety because only one party is complying,

the parties with less control need not comply with a duty imposed upon them. May 31, 1997.

An example of this is a construction project where asbestos has been identified. The constructor on the project has the greatest degree of control and is primarily responsible for ensuring the removal of the asbestos is performed so as not to endanger the workers. Where the constructor ensures compliance with the standards and regulations, the employer must also ensure compliance with the regulations. The employer is absolved of the requirement to comply only where the compliance would result in needless duplication (eg.- duplicate air sampling or two sets of tarps) and the workers are not endangered by only one party complying. May 31, 1997.

The key to this section is for the field staff to do a detailed investigation before determining who is the party with the greatest degree of control. May 31, 1997.

## OCCUPATIONAL HEALTH AND SAFETY ADVISORY COUNCIL

**Continuation of Council**

**24 (1)** The Occupational Health and Safety Advisory Council, established by the former Act, is hereby continued.

**(2)** The Minister shall appoint to the Council persons who have a particular knowledge and experience relating to the protection and promotion of occupational health and safety generally.

**Membership of Council and subcommittees**

**25 (1)** The membership of the Council shall include equal representation from employers and employees.

**(2)** In addition, the Director and the Chair of the Workers' Compensation Board, or a person designated to represent the Chair, and a representative of any group or groups selected by the Minister are members of the Council.

**(3)** The Minister may appoint one or more alternate members of the Council.

**(4)** An alternate member of the Council shall act in place of a member of the Council.

**(5)** A member or alternate member of the Council holds office during the term prescribed in that person's appointment and may be re-appointed.

**(6)** The Council may, with the approval of the Minister, appoint one or more subcommittees of the Council and a subcommittee shall perform any of the functions described in Section 26, as determined by the Council.

**(7)** For greater certainty, a person who is not a member of the Council may be a member of a subcommittee of the Council.

**(8)** The Minister may designate one employer representative and one employee representative as co-chairs of the Council.

**(9)** Persons appointed to the Council or a subcommittee of the Council shall be paid the reasonable expenses incurred by them in the course of carrying out their duties for the Council or subcommittee of the Council.

**Functions of Council**

**26** The Council may advise the Minister on

(a) the administration of this Act and the regulations;

(b) occupational health and safety including, but not limited to, providing recommendations, giving advice and monitoring and reporting on occupational health and safety throughout the Province;

(c) the exclusion of any profession, employee, employer, workplace, project, owner, occupation, industry, self-employed person or dependent contractor from all or part of the application of this Act or the regulations;

(d) any other matter relating to occupational health and safety.

## OCCUPATIONAL HEALTH AND SAFETY POLICY

**Requirement for Policy**

**27 (1)** Where

(a) five or more employees are regularly employed by an employer other than a constructor or contractor;

(b) five or more employees are regularly employed directly by a constructor or contractor, not including employees for whose services the constructor or contractor has contracted;

(c) the regulations require an occupational health and safety policy; or

(d) an officer so orders,

the employer shall prepare and review, at least annually, a written occupational health and safety policy, in consultation with the committee or representative, if any.

The Act creates a requirement for a Health and Safety Policy for all employers with five or more employees in the organization. This is distinguished from a representative which is required where there are five or more employees in a workplace. So, for example, an organization with four workplaces with two employees each must have a safety policy. Also, the five employees do not include any workers that are contracted through another employer (eg.- temporary clerical staff through a temporary service). May 31, 1997.

A policy is not required on a construction project. May 31, 1997.

Officers will require that the policy be signed by a senior manager. May 31, 1997.

Section 27 does not specify that the policy must be unique to an employer or that every employer must develop their own. Thus, it would be permissible for several employers (i.e. several government departments) to share a common policy, assuming that the policy is developed in consultation with employees and includes the required information. May 1, 1997

When counting numbers of employees for any purpose under this Act or the regulations, management employees of a corporation should be included in the count. However, the owners of a sole proprietorship or an unincorporated partnership should not be counted. 2 May 1998

**(2)** Where this Act or the regulations do not require there to be a committee at a workplace, consultation on the development of the policy shall be carried out by the employer and shall include discussion of the proposed policy at one or more workplace health and safety meetings involving the employees.

It should be noted that sub-section 27(2) is the only section in the Act that requires a safety meeting where there is no committee. May 31, 1997.

**(3)** The policy shall express the employer's commitment to occupational health and safety and shall include

(a) the reasons for the employer's commitment to health and safety;

A policy should be accepted so long as it reasonably covers the three issues noted in 27(3) - commitment, cooperation, responsibility. Details, such as who precisely is responsible for what exactly, are not required in the policy. Such details may be in the program. February 6, 2000.

(b) the commitment of the employer to co-operate with the employees in pursuing occupational health and safety; and

(c) the responsibilities of the employer, supervisors and other employees in fulfilling the commitment required pursuant to clause (b).

## OCCUPATIONAL HEALTH AND SAFETY PROGRAM

**Requirement for program**

**28 (1)** Where

(a) twenty or more employees are regularly employed by an employer other than a constructor or contractor;

(b) twenty or more employees are regularly employed directly by a constructor or contractor, not including employees for whose services the constructor or contractor has contracted; or

(c) the regulations require an occupational health and safety program,

the employer shall establish and maintain a written occupational health and safety program, in consultation with the committee or representative, if any, that is adapted to the circumstances of the organization for the purpose of implementing the employer's policy, this Act and the regulations.

This requirement is different than the requirement for a committee. For a health and safety program, the number of employees in the organization, not each workplace, is the basis for whether or not there needs to be a program for the employer. May 31, 1997.

A health and safety program is not required on a construction project, but each constructor who employs twenty or more employees must have a program for its workplace. May 31, 1997.

The larger the organization, the greater the detail that will be expected to comply with the requirements for a health and safety program. May 31, 1997.

See the discussion under sub-section 27(1) for information on the inclusion of management employees for the purposes of determining total employee numbers and thus the extent of legal obligations. 2 May 1998

**(2)** The program shall include

(a) provision for the training and supervision of employees in matters necessary to their health and safety and the health and safety of other persons at the workplace;

(b) provision for the preparation of written work procedures required to implement safe and healthy work practices, including those required pursuant to this Act, the regulations or by order of an officer, and identification of the types of work for which the procedures are required at the employer's workplace;

There is no explicit requirement or time frame for reviewing the safe work procedures developed under this section; however, the larger scope of the Health and Safety Program is required to be maintained - therefore, the procedures would need to be reviewed/assessed at least whenever the process dealt with had changed significantly. Also see requirements of 28(2)(i). Jan 1, 2004

(c) provision for the establishment and continued operation of a committee required pursuant to this Act, including maintenance of records of membership, rules of procedure, access to a level of management with authority to resolve health and safety

matters and any information required under this Act or the regulations to be maintained in relation to a committee;

(d) provision for the selection and functions of a representative where required pursuant to this Act, including provision for access by the representative to a level of management with authority to resolve health and safety matters;

(e) a hazard identification system that includes

(i) evaluation of the workplace to identify potential hazards,

(ii) procedures and schedules for regular inspections,

There are no specific frequencies required for general inspections - the extent of the hazard needs to be considered and employees consulted to determine an appropriate inspection frequency (Feb. 1, 2004)

(iii) procedures for ensuring the reporting of hazards and the accountability of persons responsible for the correction of hazards, and

(iv) identification of the circumstances where hazards must be reported by the employer to the committee or representative, if any, and the procedures for doing so;

(f) a system for workplace occupational health and safety monitoring, prompt follow-up and control of identified hazards;

(g) a system for the prompt investigation of hazardous occurrences to determine their causes and the actions needed to prevent recurrences;

(h) maintenance of records and statistics, including reports of occupational health and safety inspections and occupational health and safety investigations, with provision for making them available to persons entitled to receive them pursuant to this Act; and

(i) provision for monitoring the implementation and effectiveness of the program.

This requirement to monitor the implementation and effectiveness of the program - and therefore it's parts like safe work procedures - implies a review period to be established and conducted in consultation with the JOHS committee. Jan 1, 2004

**(3)** The employer shall make available a copy of the program

(a) to the committee or representative, if any; and

(b) on request, to an employee at the workplace.

Any request for a copy of the program must be in made in writing before a Divisional officer will enforce it. May 31, 1997.

## JOINT OCCUPATIONAL HEALTH AND SAFETY COMMITTEES

**Requirement for committees**

**29 (1)** At every workplace where twenty or more persons are regularly employed, the employer shall establish and maintain one joint occupational health and safety committee or, at the discretion of the employer, more than one such committee and, where twenty or more persons are regularly employed by one or more constructors at a project, a constructor shall establish and maintain a joint occupational health and safety committee for the project.

**(2)** At a workplace where fewer than twenty persons are regularly employed, the Director may

**(a)** consult with the employer and employees at the workplace regarding whether a committee should be formed at the workplace; and

**(b)** order that a committee be established.

In general, workplace should be considered in the singular, rather than the plural. This means that geographically separate work sites, under the ownership or control of one employer, will generally be considered separate workplaces. There will be cases where buildings that are separate but very close, could reasonably be considered to be one workplace for the purposes of the Act. Obviously, judgement will have be exercised on a case-by case basis. The following is a list of some considerations for determining the extent of a workplace:

- the physical site or place where the workers work;
- the nature and extent of the area that can be considered near where a worker works;
- whether or not the workers move between different buildings to perform their jobs;
- the workplace parties' views as to what the workplace comprises;
- the practices of the employer in establishing a joint committee, including any collective agreement which may commit to a higher than statutory minimum;
- the impact on worker health and safety, of a particular determination of the boundaries of the workplace. May 31, 1997.

The challenge is to maintain a committee that is not too remote from a workplace to secure the benefits of drawing on experiences from various sites. May 31, 1997.

The result is that an employer may provide for one or several committees or a combination of committees and representatives. The intention is that each workplace within the organization that has 20 or more persons regularly employed would be required to have a committee. These considerations would also be used to trigger the requirement for a health and safety representative at each workplace of 5 to 19 employees. May 31, 1997.

For an employer that has employees on a construction project, there may be a requirement for the employees to be members of two or more committees. If the employer has twenty or more employees based out of a workplace, the new Act requires a committee at the workplace. Also, if the employees are assigned to work on a construction project with twenty or more employees, the project will have its own committee in

addition to one that the company may have. May 31, 1997.

Where the employer is required to have a committee for any part of the year, the committee is established for the entire year. May 31, 1997.

See the discussion under sub-section 27(1) for information on the inclusion of management employees for the purposes of determining total employee numbers and thus the extent of legal obligations. 2 May 1998

**(3)** Where an order respecting establishment of a committee is given pursuant to subsection (2), the employer shall ensure that the committee is chosen and functioning in accordance with this Act within fifteen days of receipt of the order.

In relation to sub-section 29(3), the committee must represent the interests of all the employees in the workplace. If the workplace has more than one union or some employees who are not unionized, the committee must reflect this diversity. An alternative is to have more than one committee to represent the interests of the various parties. May 31, 1997.

The OH&S Act mandates that various activities must occur within specific time periods. These include appointment of JOHSC's and representatives, release of information and appeals. In order to clarify how "days" are counted in law, the following points are given:

1) The day of the order, request or other initiating factor does not count. Counting starts on the following day.
2) The days counted are calender days. That is, weekends and holidays are included.
3) If the last day falls on a weekend or a holiday on which Nova Scotia Government offices are closed, the deadline is automatically extended to the next business day after the holiday.
4) The time expires at 11:59:59 p.m. on the last day of the period. Thus, items delivered or faxed after the close of business would still be accepted if they were received before midnight.

For legal references, see Interpretation Act, RSNS 1989, c. 235, clauses 7(1)(j) and 19(k) and (l) and the case of Gould et al. v. Yorke and Kelly and Wawanesa Mutual Insurance Company (third party) (1979), 37N.S.R. (2d) 473 (N.S.S.C., T.D.). July 23, 1998

**Composition and procedure of committee**

**30 (1)** A committee shall consist of such number of persons as may be agreed to by the employer and the employees or their union or unions.

There is no certification system for JOHS committee members in Nova Scotia regulations (Feb 01,04)

**(2)** At least half of the members of a committee shall be employees at the workplace who are not connected with the management of the workplace and the employer may choose up to one half of the members of the committee if the employer wishes to do so.

For a discussion on the appointment to Joint Occupational Health and Safety Committees of supervisors, employees on lay-off and persons who are not employees, see Appendix C.

**(3)** The employees on the committee are to be determined by the employees they represent, or designated by the union that represents the employees.

In cases where a trade union, for whatever reason, declines to nominate a member to a joint occupational health and safety committee, the officer should:
1) meet with the union and try to convince them to alter their stance;
2) failing one, report the facts to the Director who may take alternative action. May 2, 1998

**(4)** A committee shall meet at least once each month unless

(a) a different frequency is prescribed by the regulations; or

(b) the committee alters the required frequency of meetings in its rules of procedure.

**(5)** Where a committee alters the required frequency of meetings by its rules of procedure and the Director is not satisfied that the frequency of meetings is sufficient to enable the committee to effectively perform its functions, the frequency of meetings shall be as determined by the Director.

**(6)** An employee who is a member of a committee is entitled to such time off from work as is necessary to attend meetings of the committee, to take any training prescribed by the regulations and to carry out the employee's functions as a member of the committee, and such time off is deemed to be work time for which the employee shall be paid by the employer at the applicable rate.

An employee that is a member of a committee is entitled to be paid for time spent committee activities when such activities are approved by the employer. The employee will be paid at the applicable rate. "Applicable rate" has been interpreted by arbitrators as the rate paid in accordance with the collective agreement or workplace practices. This may mean the employee is entitled to overtime. Where an employee complains of not being paid, the provisions of Sections 45 and 46 apply. May 31, 1997.

**(7)** A committee shall establish its own rules of procedure and shall adhere to the applicable regulations.

**(8)** Unless a committee determines another arrangement for chairing the committee in its rules of procedure, two of the members of the committee shall co-chair the committee, one of whom shall be selected by the members who represent employees and the other of whom shall be selected by the other members.

**(9)** The rules of procedure established pursuant to subsection (7) shall include an annual determination of the method of selecting the person or persons who shall

(a) chair the committee; and

(b) hold the position of chair for the coming year.

**(10)** Where agreement is not reached on

(a) the size of the committee;

(b) the designation of employees to be members; or

(c) rules of procedure,

the Director shall determine the matter.

**Functions of committee**

**31 (1)** It is the function of the committee to involve employers and employees together in occupational health and safety in the workplace and, without restricting the generality of the foregoing, includes

The functions of a committee have been enlarged to include the identification of hazards, the effective response to the hazards and the auditing of compliance with the legislation. May 31, 1997.

The main role of the committee is to provide advice and recommendations. The only place where a specific decision-making authority is conferred on a committee is in clause 43(1)(b), where, by unanimous vote, they may advise an employee to return to work. May 31, 1997.

Where it applies, the Workers Compensation Act protects committee members from any civil actions initiated by co-workers because employees of employers who are covered by the Workers Compensation Act cannot sue each other for workplace injuries. For a more detailed discussion of the liability of committee members, see Appendix F. 2 May 1998

(a) the co-operative identification of hazards to health and safety and effective systems to respond to the hazards;

(b) the co-operative auditing of compliance with health and safety requirements in the workplace;

(c) receipt, investigation and prompt disposition of matters and complaints with respect to workplace health and safety;

(d) participation in inspections, inquiries and investigations concerning the occupational health and safety of the employees and, in particular, participation in an inspection referred to in Section 50;

The "inspections" noted in clause 31(1)(d) include Department of Labour inspections, joint committee inspections, monitoring and testing performed by the employer and other inspections to which the employer and the committee agree and the participation of the committee does not violate a law. May 31, 1997.

Clause 31(1)(d) is an empowering section that aims at ensuring employees are involved in inspections and investigations, although the extent of involvement is not clearly set out. The clause essentially allows a committee to inspect workplaces and investigate incidents if they so choose. However, it does not make such inspections mandatory. May 31, 1997.

From the perspective of Occupational Health and Safety Officers asked to determine precisely what a committee or representative must do, the officer should look to the committee's rules of procedure to

see what portion of inspections and investigations require direct committee involvement. Officers are cautioned however that rules of procedure or practices which imply or suggest no meaningful JOHSC involvement in investigations may be a violation of the Internal Responsibility System and should not be accepted. May 31, 1997.

(e) advising on individual protective devices, equipment and clothing that, complying with this Act and the regulations, are best adapted to the needs of the employees;

(f) advising the employer regarding a policy or program required pursuant to this Act or the regulations and making recommendations to the employer, the employees and any person for the improvement of the health and safety of persons at the workplace;

(g) maintaining records and minutes of committee meetings in a form and manner approved by the Director and providing an officer with a copy of these records or minutes on request; and

(h) performing any other duties assigned to it

(i) by the Director,

(ii) by agreement between the employer and the employees or the union, or

(iii) as are established by the regulations.

**Deemed establishment of committee**

**32** Where a committee was established prior to January 1, 1986, and has been maintained, pursuant to a collective agreement or other arrangement in a workplace, and the Director is satisfied that such committee or arrangement provides benefits for the health and safety of employees equal to or greater than the benefits to be derived under a committee established pursuant to this Act, the committee or arrangement is deemed to have been established in compliance with this Act.

## HEALTH AND SAFETY REPRESENTATIVES

### Requirement for and functions of representatives

**33 (1)** At a workplace where no committee is required pursuant to Section 29 and where the number of persons employed is five or more, the employer shall cause the employees to select at least one health and safety representative from among the employees at the workplace who are not connected with the management of the workplace.

As with a committee, an employer may be required to have a representative at the workplace and have employees represented by a representative on a construction project. May 31, 1997.

Note that, under subsection 29(1), the requirement for a Joint Occupational Health and Safety Committee only comes into force when there are 20 or more workers who are regularly employed (i.e. working more than 4 weeks). There is no requirement under 29(1) for a committee where there are more than 20 workers but they are not regularly employed. In these circumstances though, there is still a requirement for a Health and Safety Representative. The policy goal is that, wherever there are 5 or more people at a workplace, there will be a definite employee representing workers on health and safety. May 31, 1997.

Where it applies, the Workers Compensation Act protects representatives from any civil actions initiated by co-workers as a result of workplace injuries. May 31, 1997.

For a discussion on the appointment as Health and Safety Representatives of supervisors, employees on lay-off and persons who are not employees, see Appendix C.

**(2)** At a project where no committee is required pursuant to Section 29 and where the number of persons employed is five or more, a constructor shall cause the employees to select at least one health and safety representative for the purposes of the project from among the employees at the project who are not connected with the management at the project.

**(3)** At a workplace where fewer than five persons are employed, the Director may

(a) consult with the employer and employees at the workplace regarding whether a representative should be selected at the workplace; and

(b) order that a representative be selected by the employees from among the employees at the workplace who are

not connected with the management of the workplace.

**(4)** Where an order respecting the selection of a representative is given pursuant to subsection (3), the employer shall ensure that the representative is selected and functioning in accordance with this Act within fifteen days of receipt of the order.

See references for sub-section 29(3) for a discussion on the counting of days. July 23, 1998

**(5)** An employee who is a representative is entitled to such reasonable time off from work as is necessary to carry out the employee's functions as a representative, and such time off is deemed to be work time for which the employee shall be paid by the employer at the applicable rate.

**(6)** It is the function of the representative to be involved, on behalf of the employees together with the employer, in occupational health and safety in the workplace and, without restricting the generality of the foregoing, includes

The functions of the representative are the same as that of the committee. May 31, 1997.

Note there is no requirement on Health and Safety Representatives to record their activities in writing. The exception to this outcome would be in cases where, pursuant to clause 33(6)(g), records are required by:

1) the Director;
2) the employer and employees or unions acting in concert ;
3) any regulations that may be passed dealing with this topic. May 31, 1997.

On the other hand, if a Health and Safety Representative, for their own reasons, wishes to keep notes, they have the right to do so. The employer cannot interfere. May 31, 1997.

When explaining this part of the Act, officers may wish to note that, despite the lack of a legal requirement, it is often a good idea for both a company and a Health and Safety Representative to keep written records of their OH&S activities as a memory aid, were such an aid to become necessary in the future. May 31, 1997.

(a) the co-operative identification of hazards to health and safety and effective systems to respond to the hazards;

(b) the co-operative auditing of compliance with health and safety requirements in the workplace;

(c) receipt of and co-operation with the employer in the investigation and prompt disposition of matters and complaints with respect to workplace health and safety;

(d) participation in inspections, inquiries and investigations concerning the occupational health and safety of the employees and, in particular, participation in an inspection referred to in Section 50;

(e) advising on individual protective devices, equipment and clothing which, complying with this Act and the regulations, are best adapted to

the needs of the employees;

(f) advising the employer regarding a policy or program required by this Act or the regulations and making recommendations to the employer, the employees and any person for the improvement of the health and safety of persons at the workplace; and

(g) performing any other duties assigned to the representative

(i) by the Director,

(ii) by agreement between the employer and the employees or the union, or

(iii) as are established by the regulations.

Clause 33(6)(g) is an empowering section that aims at ensuring employees are involved in inspections and investigations, although the extent of involvement is not clearly set out. The section essentially allows a representative to inspect workplaces and investigate incidents if they so choose. However, it does not make such inspections mandatory. May 31, 1997.

From the perspective of Occupational Health and Safety Officers asked to determine precisely what a representative must do, the officer should look to the representative's common practice (since representatives do not need to produce rules of procedure) to see what portion of inspections and investigations require direct representative involvement. Officers are cautioned however that practices which imply or suggest no meaningful representative involvement in investigations may be a violation of the Internal Responsibility System and should not be accepted. May 31, 1997.

## COMMUNICATION OF INFORMATION

**Response to written recommendations**

**34 (1)** An employer who receives written recommendations from a committee or representative and a request in writing to respond to the recommendations, shall respond in writing to the committee or representative within twenty-one days, and the response shall

(a) indicate acceptance of the recommendations; or

(b) give reasons for the disagreement with any recommendations that the employer does not accept,

or, where it is not reasonably possible to provide a response before the expiry of the twenty-one day period, provide within that time a reasonable explanation for the delay, indicate to the committee or representative when the response will be forthcoming, and provide the response as soon as it is available.

**(2)** Where the committee or representative makes a request pursuant to subsection (1) and is not satisfied that the explanation provided for a delay in responding is reasonable in the circumstances, the chair or co-chairs of the committee, or representative, as the case may be, shall promptly report this fact to an officer.

The committee or representative must actually request a response to its recommendation(s) from the employer before the employer is required to give one. There is no requirement for an employer to respond where the committee or representative does not make a written request for a response. May 31, 1997.

The request must be in writing and separate from a written request in the minutes before an OH&S Division officer will enforce it. May 31, 1997.

**Duty of employer to provide certain information**

**35 (1)** An employer shall notify the committee or representative, if any, of the existence of reports of

(a) workplace occupational health or safety inspections; and

(b) workplace occupational health or safety monitoring or tests,

undertaken at the workplace by, or at the request of, an officer or the employer and, on request, the employer shall make the reports available to the committee or the representative.

**(2)** An employer shall make available to an employee at a workplace, on request, reports of

(a) workplace occupational health or safety inspections; and

(b) workplace occupational health or safety monitoring or tests,

undertaken at the workplace by, or at the request of, an officer or the employer.

**(3)** Within twenty-one days of receiving a request in writing from the committee, representative or, where there is no committee or representative, an employee at a workplace for any information of a health or safety nature other than that specified in subsection (1), the employer shall respond in writing and the response shall

(a) provide the requested information; or

(b) give reasons for not providing the information, in whole or in part,

and where it is not reasonably possible to provide a response before the expiry of the twenty-one day period, provide within that time a reasonable explanation for the delay, indicate to the committee, representative or employee when the response will be forthcoming and provide the response as soon as it is available.

**(4)** Where the committee, representative or

When any material is to be "made available", the material must be made available in a way or form that will allow the person who is to receive the material to accomplish a legitimate purpose anticipated by the OH&S Act. The minimum standard at all times is that the material shall be available for viewing by the parties to whom it was intended to be made available. Summaries, excerpts or edited copies (subject to sub-section 39(2)) would not be acceptable.
If the receiving party cannot accomplish a legitimate purpose with the material without removing the material from the work site, the receiving party shall be given either the original or a copy to remove to a place where the necessary examination may take place.
Reasons why an examining party may not be able to accomplish a legitimate purpose without a copy include:
- a very or complex lengthy document that would take time to review and analyze
- a need to consult with others, such as union experts, on the material
- limited literacy of the receiving party requiring someone to read it on their behalf.
Receiving parties may still be required to ensure the information is not used for purposes not anticipated by the OH&S Act. The receiving party may face repercussions where their actions or negligence result in unauthorized disclosure to media or competitors.
(March 27, 2001)

employee makes a request pursuant to subsection (3) and is not satisfied that the explanation provided for a delay in responding is reasonable in the circumstances, the chair or co-chairs of the committee, the representative or the employee, as the case may be, shall promptly report this fact to an officer.

**Duty of officer to provide certain information**

**36** An officer shall provide to the employer at a workplace reports of

(a) workplace occupational health or safety inspections; and

(b) workplace occupational health or safety monitoring or tests,

undertaken at the workplace by, or at the request of, an officer, and the employer shall comply with subsections 35(1) and (2).

**Duty of employer to post certain information**

**37** The employer shall

(a) post and maintain the current names of the committee members or the representative, if any, and the means of contacting them; and

(b) post promptly, where there is a committee, the minutes of the most recent committee meeting and ensure they remain posted until superseded by minutes of the next committee meeting.

**Availability of information at workplace**

**38 (1)** Every employer shall

(a) make available for examination at the workplace

(i) a copy of the regulations that relate to the workplace, and

(ii) information and reports that an officer considers advisable to enable employees to become acquainted with their rights and responsibilities pursuant to this Act and the regulations;

Officers may require the employer to share information with employees where that information will "enable employees to become acquainted with their rights and responsibilities pursuant to this Act and the regulations". Examples could be JOHSC minutes, information on products outside of MSDS's.

When exercising this power, officers should:

- never override the IRS. That is, where an employee, JOHSC or H&S representative could have asked the employer for the information, the officer should not normally intervene unless the officer is convinced that such a request has first been made and the employer has turned it down. The officer may be convinced by such things as:
  - i) written requests in JOHSC minutes
  - ii) written requests in other forms to an appropriate employer representative
  - iii) verbal requests where witnesses convince the officer that a clear request was made to an appropriate employer representative
  - iv) having a request made in the presence of the officer to an appropriate employer representative.
- be careful of trade secrets. The officer should only require the disclosure of necessary information.
- not require the disclosure of information beyond that required for the "employees to become acquainted with their rights and responsibilities pursuant to this Act and the regulations" (March 27, 2001)

and

(b) post in a prominent place or places in the workplace capable of being easily accessed by the employees

(i) a current copy of this Act,

(ii) a code of practice required pursuant to this Act or the regulations,

(iii) a current telephone number for

Where the workplace, such as a small construction company or a wood cutting business, prevents the posting of the Act, codes of practice, telephone numbers or the policy, the employer must have a copy of the information posted at the administrative centre for the employer. Also, to ensure the employees have a copy of the information, a copy of the information must be provided to each employee. May 31, 1997.

reporting occupational health or safety concerns to the Division, and

(iv) where the employer is required pursuant to this Act or the regulations to have an occupational health and safety policy, the policy,

and ensure they remain posted.

**(2)** Where anything other than the information listed in subsection (1) is required to be posted pursuant to this Act or the regulations, the person who has the duty to post shall

(a) post a legible copy of it in a prominent place or places in the workplace capable of being easily accessed by the employees; and

(b) ensure that it remains posted for at least seven days, or longer if additional time is necessary to enable employees at the workplace to inform themselves of the content, unless this Act or the regulations otherwise specify,

or in lieu of complying with clauses (a) and (b), shall provide the information to each employee, in writing.

The intent of this section is easy access by employees to information. As an alternative to posting the information required in 38(2), the information may be provided to employees through:
i) e-mail or internet where all employees have electronic access - **note**, with this option the employer must ensure all employees are trained in the use of computers and where to find the electronic information, and take every reasonable precaution to ensure computers are in active working order whenever an employee may wish to access it;
ii) individual hard copies to all employees - **note**, with this option, the employer should be prepared to replace copies that workers may misplace. (August 1, 2004)

**Duty of employer to provide certain information**

**39 (1)** Where

(a) an officer makes an order pursuant to this Act or the regulations against an employer;

(b) a compliance notice is required of an employer pursuant to subsection 56(1); or

(c) an appeal is initiated or disposed of pursuant to Section 67 or 69,

the employer shall, subject to subsections (2) and (3), immediately

(d) post the order, compliance notice, notice of appeal or decision; and

(e) deliver a copy of the order, compliance notice, notice of appeal or decision to the committee or representative, if any.

If an extension is required to comply with an officer's order; the person to whom the order was issued would be responsible for requesting the extension (Feb. 1, 2004)

**(2)** An officer may authorize in writing an officer's order to be edited to protect a trade secret, secret manufacturing process or confidential personal information, the disclosure of which is limited pursuant to this Act.

When considering a restriction sub-section under 39(2), the officer should consider whether:

i) the trade secret is covered under sub-section 61(1) of the Act or under any section of the Hazardous Materials Information Review Act (Canada), which is part of the federal WHMIS legislative scheme;

ii) the minimum amount of information is withheld in support of the general philosophy of the maximum amount of discloseable information being available to the employees. May 31, 1997.

**(3)** Where an order is edited pursuant to subsection (2), the authorization of the officer shall be affixed to the order and it shall be posted in accordance with this Act in substitution for the unedited order.

**Service of documents**

**40** (1) For the purpose of this Act and the regulations and any proceedings thereunder, any order, notice, document or other communication sent through the mail shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

(2) An order, notice, document or other communication may be served or delivered for the purpose of this Act or the regulations by personal service or by sending by registered mail to the last known address of the addressee.

The Act does not specifically allow for the service of orders by facsimile or other electronic method. While, orders may be faxed for convenience sake, to ensure compliance with the Act, any orders issued via electronic media must also be served in person or through regular/registered mail. January 31, 2002.

**Right to annual summary of data**

**41** Where the *Workers' Compensation Act* applies to a workplace,

(a) a committee;

(b) a representative;

(c) an employee; or

(d) an employer,

at the workplace who so requests in writing shall receive an annual summary of data relating to the employer.

The Act provides for the provision of summary information on accident experience where it is requested by one of the parties identified. The computer system currently operated by the WCB can produce these reports on request. This section of the Act is interpreted to mean that:

1. the workplace committee through its chairperson or the safety representative
2. the employer through the firm manager or management designate responsible for health and safety, or
3. an employee currently employed with the firm who has requested the information from the workplace committee and has not received it,

may request, in writing, the information. The reports provided when requested should include the following printouts - 4000, 4008 and 4009.
December 5, 1996

## WORKPLACE MONITORING, MEASUREMENTS AND TESTS

**Right of employee to observe and be paid**

**42 (1)** Every employer shall permit an employee selected pursuant to subsection (2) to observe workplace occupational health or safety monitoring and the taking of samples or measurements that relate to the health or safety of employees at the workplace, unless the monitoring or taking of samples or measurements takes place

(a) continuously or on a regular and frequent basis, except to observe the initial setup of the workplace occupational health or safety monitoring process and to be informed and observe the monitoring where there has been a malfunction of the monitor or alteration in the process;

(b) in a location that is remote and is part of the regular task of a person employed at the location; or

(c) during an emergency situation,

and time spent by the employee in such activities is deemed to be work time for which the employee shall be paid by the employer at the applicable rate.

The question has been raised as to what activities were meant to be covered by the rather broad term "workplace occupational health or safety monitoring and the taking of samples or measurements that relate to the health or safety of employees . . ." December 1, 1997.

The term should be interpreted to include all tests a significant part of whose rationale is based in either health or safety. This includes such things as air and noise tests, crane tests, vehicle safety checks and tests on safety devices. December 1, 1997.

The section should not be interpreted as giving employees the right to observe medical tests (such as audiograms or blood lead tests), or any other test where personal privacy is important. December 1, 1997.

As to disputes over regular tests that exist when the Act comes into force, OH&S officers will ensure that the employee representatives have the chance to observe one example of such tests. December 1, 1997.

The definition of regular and frequent in (a) will be determined by the committee or representative in each workplace. December 1, 1997.

Remote location in (b) means 30 minutes or more, by ground transportation, from the location of the observer. December 1, 1997.

**(2)** Where there is

(a) a committee or representative at a workplace, the employee who observes workplace occupational health or safety monitoring and the taking of samples or measurements shall be selected by the committee or representative, as the case may be; or

(b) no committee or representative at a workplace, the employee who observes workplace occupational health or safety monitoring and the taking of samples or measurements shall be selected by the employees.

**(3)** Every employer shall provide

(a) reasonable notice to an observer of the commencement of the occupational health or safety monitoring and of the taking of samples or measurements undertaken pursuant to subsection (1); and

(b) access to a workplace for the purpose of the observation.

**(4)** Where an observer requests, the procedure for occupational health or safety monitoring and the taking of samples or measurements shall be identified and explained to the observer.

**(5)** Where an owner, constructor or contractor performs occupational health or safety monitoring or takes samples or measurements that relate to the health or safety of employees at the workplace,

(a) the owner, constructor or contractor shall provide reasonable notice to all employers at the workplace of the commencement of the occupational health or safety monitoring and of the taking of samples or measurements; and

(b) the requirements of subsections (1) to (4) apply.

**(6)** Where the monitoring, samples or measurements referred to in subsection (1) are conducted by, or at the request of, an officer, the officer may undertake the monitoring, samples or measurements whether or not notice has been given pursuant to subsection (3) or (5).

Reasonable notice means enough time to allow the employee to arrange in an orderly fashion for their attendance at the test site. May 15, 1997

Reasonable notice means enough time to allow the employer to arrange in an orderly fashion for the attendance of an observer. December 5, 1996.

## RIGHT TO REFUSE WORK

### Right to refuse work and consequences of refusal

**43 (1)** Any employee may refuse to do any act at the employee's place of employment where the employee has reasonable grounds for believing that the act is likely to endanger the employee's health or safety or the health or safety of any other person until

An employee can refuse to work where any person, not just an employee, is endangered. December 5, 1996.

There are no specific words that a refusing employee must use when communicating a work refusal to a supervisor or others. From the standpoint of making it an "official" refusal, and thus subject to the protections from discriminatory action given under this Act, it would be enough for the investigating officer to conclude, based on the facts of the case and regardless of whether words such as "health and safety work refusal" were used, that a reasonable person could conclude that the employee was in fact refusing due to a health and safety concern. The benefit of the doubt should go to the employee. May 2, 1998

Under Sub-section 43(1) , air quality and hearing hazards are definitely "allowable" grounds to refuse work, assuming an honest underlying belief that a danger exists. As for leaving, the Act assumes that the aim of the refusal is to remove the refuser from source of harm. In the case of a machine, this translates into not using the machine. In the case of air quality or noise, this would translate into leaving the areas of poor air quality or high noise. Thus, the employee can leave those areas of the workplace with bad air or high noise as soon as the employee comes to the reasonable belief that "the act [of staying there] is likely to endanger the employee's health or safety or the health or safety of any other person." The employee cannot leave the workplace altogether (unless it all has bad air or high noise) without risking their pay through not being available for other work. February 8, 2000.

(a) the employer has taken remedial action to the satisfaction of the employee;

(b) the committee, if any, has investigated the matter and unanimously advised the employee to return to work; or

In 43(1)(b), the committee, as a whole, or a quorum of the committee can investigate the refusal. However, whatever the composition of the investigating group, the group must be unanimous in its decision if the committee is to advise the worker to return to work. Any other decision does not require unanimity. April 26, 2004

Note that a Health and Safety Representative does not have the same powers to advise an employee to return to work as does a committee. It would be anticipated though that the representative would be involved in some way in any investigation. May 15, 1997

(c) an officer has investigated the matter and has advised the employee to return to work.

The complaint to the Division may be made by the union in the workplace or by a legal representative of the union. December 5, 1996
It is the policy of the Occupational Health and Safety Division that the best means of addressing a work refusal is to have the workplace parties attempt to resolve the matter before the Division becomes involved. However, an officer may become involved in a work refusal investigation if contacted, even before the parties have followed the steps set out in subsection 43(2)(a) and (b).
June 18, 2004
When involved, the officer must investigate and determine whether or not the task refused is unsafe. If the officer cannot find indications that the task is unsafe, the officer would advise the employee to "return to work". These findings would be confirmed in writing to the employee and employer. If the officer finds that the task refused is unsafe, the officer will ensure that no one performs the task until appropriate action is taken to remedy the situation. December 5, 1996

**(2)** Where an employee exercises the employee's right to refuse to work pursuant to subsection (1), the employee shall

(a) immediately report it to a supervisor;

(b) where the matter is not remedied to the employee's satisfaction, report it to the committee or the representative, if any; and

(c) where the matter is not remedied to the employee's satisfaction after the employee has reported pursuant to clauses (a) and (b), report it to the Division.

**(3)** At the option of the employee, the employee who refuses to do any act pursuant to subsection (1) may accompany an officer or the committee or representative, if any, on a physical inspection of the workplace, or part thereof, being carried out for the purpose of

Under sub-section 43(3), the worker who has refused to perform an unsafe or unhealthy task has the right to participate in a physical inspection made pursuant to the refusal where the committee/representative and the officer are involved. The worker is to be paid for such time spent during the inspection. The worker is not guaranteed the right to participate in discussions or interviews held outside of the physical inspection.

ensuring others understand the reasons for the refusal.

December 5, 1996.

**(4)** Notwithstanding subsection 50(8), an employee who accompanies an officer, the committee or a representative, as provided in subsection (3), shall be compensated in accordance with subsection (7), but the compensation shall not exceed that which would otherwise have been payable for the employee's regular or scheduled working hours.

**(5)** Subject to any applicable collective agreement, and subsection (3), where an employee refuses to do work pursuant to subsection (1), the employer may reassign the employee to other work and the employee shall accept the reassignment until the employee is able to return to work pursuant to subsection (1).

**(6)** Where an employee is reassigned to other work pursuant to subsection (5), the employer shall pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued in the employee's normal work.

**(7)** Where an employee has refused to work pursuant to subsection (1) and has not been reassigned to other work pursuant to subsection (5), the employer shall, until clause (1)(a), (b) or (c) is met, pay the employee the same wages or salary and grant the employee the same benefits as would have been received had the employee continued to work.

**(8)** A reassignment of work pursuant to subsection (5) is not discriminatory action pursuant to Section 45.

**(9)** An employee may not, pursuant to this Section, refuse to use or operate a machine or thing or to work in a place where

(a) the refusal puts the life, health or safety of another person directly in danger; or

(b) the danger referred to in subsection (1) is inherent in the work of the employee.

Danger is inherent in the work of the employee when, despite best efforts, the employer is unable to eliminate or reduce the danger. (Reference Brazeau vs. Securicor Ltd., [2004] C.L.C.A.O.D. No. 52 (QL))" (January 2006)

**Restriction on assignment of work where refusal**

**44** Where an employee exercises the employee's right to refuse to work pursuant to subsection 43(1), no employee shall be assigned to do that work until the matter has been dealt with under that subsection, unless the employee to be so assigned has been advised of

(a) the refusal by another employee;

(b) the reason for the refusal; and

(c) the employee's rights pursuant to Section 43.

## DISCRIMINATORY ACTION

### Prohibition of "discriminatory action"

**45 (1)** In this Section and in Section 46, "discriminatory action" means an action that adversely affects an employee with respect to terms or conditions of employment or any opportunity for employment or promotion and includes dismissal, layoff, suspension, demotion, transfer of job or location, change in hours of work, coercion, intimidation, imposition of any discipline, reprimand or other penalty including reduction in wages, salary or other benefits, or the discontinuation or elimination of the job of the employee.

It would not be discriminatory action for an employer, relying on legitimate business reasons, to refuse an employee a transfer due solely to the fact that they had specialized health and safety skills (a first aid certification, for example) that were needed at their original workplace but were not needed at the proposed new workplace.

**(2)** No employer or union shall take, or threaten to take, discriminatory action against an employee because the employee has acted in compliance with this Act or the regulations or an order or direction made thereunder or has sought the enforcement of this Act or the regulations or, without limiting the generality of the foregoing, because

(a) of the participation of the employee in, or association with, a committee or the employee has sought the establishment of a committee or performed functions as a committee member;

(b) of the association of the employee with a representative or the employee has sought the selection of a representative or performed functions as a representative;

(c) the employee has refused to work pursuant to subsection 43(1);

Note that it does not matter whether the issue which started the work refusal was objectively safe and healthy. The employee is protected from discriminatory action so long as a reasonable person, knowing what the employee knew or should have known at the time of the refusal, could have arrived at the conclusion that their own or another person's life or health was in jeopardy. May 1, 1998

(d) the employee has sought access to information to which the employee is entitled by this Act or the regulations, or has been assigned the role of

observer pursuant to Section 42;

(e) the employee has testified or is about to testify in any proceeding or inquiry pursuant to this Act or the regulations; or

(f) the employee has given information to the committee, a representative, an officer or other person concerned with the administration of this Act or the regulations with respect to the health and safety of employees at the workplace,

unless the employer or union, as the case may be, establishes that such action is solely motivated by legitimate business reasons.

(3) On an inquiry into a complaint pursuant to Section 46 alleging that there has been a failure by an employer or a union to comply with subsection (2), the burden of proving that there has been no such failure is upon the employer or the union, as the case may be.

**Right to make complaint or file grievance**

**46 (1)** An employee who complains that

(a) an employer has failed to pay wages, salary, pay or a benefit entitlement required pursuant to

(i) subsection 30(6), 33(5), 42(1), 43(4), 43(6), 43(7) or 50(8), or

(ii) the regulations; or

(b) an employer or a union has taken, or threatened to take, discriminatory action contrary to subsection 45(2),

may

(c) where the employee is not subject to a collective agreement under which the employee is entitled to file a grievance, within thirty days, make a complaint in writing to an officer; or

A complaint must be filed in writing with the Department of Labour within 30 days of the incident on which the complaint is based. December 5, 1996

An officer has no authority to investigate a complaint regarding pay unless it falls under one of the categories listed in sub-section 46(1). Specifically, outside of cases where the Act or regulations mandate such pay, pay for time spent training is a Labour Standards or collective bargaining issues in which officers are not to involve themselves. 2 May 1998

The complaint process is available to unionized and non-unionized workers. A unionized worker will decide whether to proceed under the complaint process or to proceed with a grievance. However, they cannot receive a remedy through both routes. December 5, 1996

See references for sub-section 29(3) for a discussion on the counting of days. July 23, 1998

At this stage, the investigating officer is not concerned with the issue of whether the condition that may have precipitated the complaint was or was not safe and healthy. The only issue being addressed at this stage is has discriminatory action been taken against the employee in violation of section 45. May 1, 1998

(d) where the employee is subject to a collective agreement under which the employee is entitled to file a grievance,

(i) have the complaint dealt with by final and binding arbitration under the collective agreement, or

(ii) within thirty days, make a complaint in writing to an officer, if an arbitrator has not seized jurisdiction over the matter under the collective agreement, in which case the matter shall be dealt with by the arbitrator under the collective agreement.

"seized jurisdiction"occurs when the arbitrator - person chosen by both parties - agrees to act as the arbitrator. The person must agree to act as arbitrator in the matter for them to be "seized with jurisdiction". December 3, 2002

**(2)** Where an officer receives a complaint

pursuant to subsection (1), the officer shall investigate the complaint and

(a) issue an order specifying the provision of this Act or the regulations that has been contravened; or

(b) determine that there are no grounds upon which to issue an order, and so notify the complainant.

**(3)** Where the officer determines that an employer has failed to pay wages, salary, pay or a benefit entitlement required by a provision referred to in clause (1)(a), the officer's order issued pursuant to clause (2)(a) shall require, by a specified date,

(a) the employer to pay the wages, salary, pay or other benefits required by the provision referred to in clause (1)(a); or

(b) the employer or the union to do the things that, in the opinion of the officer, are necessary to secure compliance with this Act and the regulations.

**(4)** Where the officer determines that discriminatory action has been taken or threatened against an employee contrary to subsection 45(2), the officer's order issued pursuant to clause (2)(a) shall require, by a specified date,

(a) the employer to reinstate the employee pursuant to the same terms and conditions under which the employee was formerly employed;

(b) the employer to pay any wages, salary, pay or other benefits that the employee would have earned but for the discriminatory action;

(c) that any reprimand or other references to the matter in the employer's records on the employee be removed;

(d) the reinstatement of the employee to the union and the payment by the union to the employee of any wages, salary, pay or other benefits that the employee would have earned but for the discriminatory action; or

(e) the employer or the union to do the things that, in the opinion of the officer, are necessary to secure compliance with this Act and the regulations.

**(5)** Where an order or decision of an officer made pursuant to clause (2)(a) is not appealed pursuant to subsection 67(1), the decision of the officer is final and binding.

## OFFICERS, INSPECTIONS AND ORDERS

### Powers of officers

**47** For the purpose of ensuring compliance with this Act and the regulations and any order made thereunder, an officer may

(a) at a reasonable hour of the day or night enter and inspect a workplace, conduct tests and make such examinations as the officer considers necessary or advisable;

When inspecting an area that includes a patient care area (defined as an area or room where patients discuss personal medical, dental, etc information, diagnoses and treatments) officers will consider: 1) patient care areas as part of the workplace and subject to inspection at the officers' discretion; 2) patient privacy and confidentiality as major concerns. Therefore, officers will NOT enter patient care areas when a patient is present or when patient medical/dental records are in plain sight unless the officer has reasonable grounds to believe that immediate access to the area is essential to obtain substantive information. In order to complete the inspection in a timely fashion, it is reasonable for an officer to require that no new patients enter a patient care area while it is being inspected. (August 1, 2004)

(b) require the production of records, drawings, specifications, books, plans or other documents in the possession of the employer that relate to the workplace or the health and safety of employees or other persons at the workplace and remove them temporarily for the purpose of making copies;

Whenever information is requested by an officer, the request shall be put in writing, along with a clear explanation of why the information is needed, what criteria will be used to evaluate it, the identity of the evaluator and an indication of the type and timing of feedback the client can expect. Officers shall also consider why the information could not simply be kept on site for review at the next regular inspection. December 1, 1997

(c) require the production of documents or records that may be relevant to the investigation of a complaint pursuant to subsection 46(1), and remove them temporarily for the purpose of making copies;

(d) take photographs or recordings of the workplace and any activity taking place in the workplace;

(e) make any examination, investigation or inquiry as the officer considers necessary to ascertain whether there is compliance with this Act and the regulations and any order made under them;

(f) inspect, take samples and conduct tests of samples, including tests in which a sample is destroyed, of any material, product, tool, equipment, machine or device being

produced, used or found at the workplace for which the officer shall be responsible, except for a sample that has been destroyed, until the material, product, tool, equipment, machine or device is returned to the person being inspected;

(g) examine a person with respect to matters pursuant to this Act or the regulations;

(h) for the purposes of an investigation, inquiry or examination made by the officer pursuant to this Act or the regulations, summons to give evidence and administer an oath or affirmation to a person;

(i) in an inspection, examination, inquiry or test be accompanied and assisted by or take with the officer a person having special, expert or professional knowledge of any matter;

(j) exercise such other powers as may be necessary or incidental to the carrying out of the officer's functions pursuant to this Act or the regulations.

Further to (i), an employer's expert can be used as the expert if the officer is comfortable with the advice being provided. December 5, 1996

Officers need to be aware of what defences are accepted by the courts so they can make sound decisions when considering charges in a case under investigation.

"Mistake of Fact - means an honest reasonable belief in a mistaken set of facts that leads to a violation. The accused must show they took reasonable steps to ascertain the facts of the situation. "The accused cannot simply assert they were unaware of the facts - they must show they actually put their mind to the problem, attempted to ascertain the true nature of the situation, and made all reasonable inquires to that end" (Swaigen, p.80).

"Mistake of Law" - means a mistake as to the existence of a prohibition or a failure to understand the legal duty imposed by a law. Traditionally - "ignorance of the law is no excuse". Unlike the defense of "mistake of fact", diligent efforts to determine the law will not be accepted as a defense. "Reasonable inquires as to what the law is do not protect the accused when the information received misleads the accused into believing the activity is not an offense" (Swaigen, p.82).

"Officially Induced Error" - means a mistake of law as a result of erroneous information provided by a government official. In R. v. Cancoil Thermal Corporation, the Ontario Court of Appeal recognized the application of this defence to the OH&S Act. The Court **limited the application to reasonable reliance on the erroneous legal opinion or advice of an official who is responsible for the enforcement of a particular law.**

Some tests courts may use to determine induced error
efforts the accused made to ascertain the proper

law - accused must be mistaken, not merely ignorant of the law;

complexity or obscurity of the law;

position of the official giving advice;

correctness of the advice given;

clarity and reasonableness of the advice given - the accused must act in good faith with no reason to believe the advice was wrong;

the reasonableness of the accused's error in law;

the questions and information provided to the official by the accused.

For a discussion of mistake of fact, mistake of law, and officially induced error, due diligence and a variety of other defences see Regulatory Offences in Canada: Liability & Defences, John Swaigen, 1992. October 29, 2001.

**Power of officer to seize, remove and detain**

**48 (1)** Where an officer reasonably believes that this Act or the regulations have been contravened and that a thing that is produced to the officer or that is in plain view would afford evidence of the contravention, the officer may, while acting under the authority of this Act, without a warrant or court order, seize the thing.

**(2)** The officer may remove the thing seized pursuant to subsection (1) or may detain it in the place in which it was seized.

**(3)** The officer shall inform the person from whom the thing is seized pursuant to subsection (1) as to the reason for the seizure and shall give the person a receipt for it.

**(4)** The officer shall bring a thing seized pursuant to subsection (1) before a justice or, if that is not reasonably possible, shall report the seizure to a justice.

**(5)** An officer who seizes anything pursuant to subsection (1) shall deal with it in the same way as if it were seized pursuant to the authority of a search warrant issued pursuant to the *Summary Proceedings Act*.

The Act outlines the powers of an officer to seize evidence during an investigation, including the right to seize without a warrant. A similar power has been challenged at the Supreme Court of Canada and the Court has upheld the right of inspectors, like a safety officer, to seize evidence without a warrant. However, the seized objects must be brought before a Justice of the Peace in accordance with the *Summary Offences Act*. See Appendix C for a more detailed description of how the seizure provisions are to be applied in practice.
December 5, 1996

**Powers of a peace officer**

**49** While acting under the authority of this Act, an officer has and may exercise, in any part of the Province, all the powers, authorities and immunities of a peace officer under the *Criminal Code* (Canada).

It is generally recognized that offenses under the Act are of a strict liability nature. As a precedent on this point, a copy of R. v. Rio Algom should be reviewed. This a decision of the Ontario Court of Appeal asserting this principle and offers an analysis of the standard of proof.

The OHS Act imposes two very different types of duties. Some of the sections prohibit the performance of acts which endanger other. The second and more common types of offenses under the OHS Act are failures to act positively to ensure workplace health and safety.

Finding a party guilty where the misconduct **has been nonfeasance** (failure to do what ought to be done) **rather than misfeasance** (the performance of a lawful action in an illegal or improper manner) appears to be the intended outcome of the wording of the statute. October 29, 2001.

**Accompaniment during inspections**

**50 (1)** For the purpose of this Section, "inspection" means a physical inspection of a workplace, or any part or parts of a workplace, pursuant to the powers conferred upon an officer pursuant to Section 47.

**(2)** Where an officer conducts an inspection,

(a) the employer shall give the representative or an employee member of the committee, if any; and

(b) a representative of the employer shall have,

the opportunity to accompany the officer during the officer's inspection.

**(3)** Where there is no committee member representing employees or representative available, the officer may select one or more employees who shall accompany the officer during the officer's inspection.

**(4)** Where a representative or employee member of the committee is unavailable to accompany the officer during the officer's inspection, the officer shall endeavour to consult with a reasonable number of employees during the inspection.

**(5)** For greater certainty, where

(a) a person referred to in clause (2)(a) or (b) is unavailable to accompany an officer during the officer's inspection; and

(b) in the officer's opinion it is necessary to proceed with the inspection without accompaniment,

the officer may conduct the inspection without accompaniment.

**(6)** Notwithstanding subsections (2) and (3) and subject to subsection (7), an officer may question any person who is or was in a workplace either separate and apart from another person or in the presence of any other person regarding anything that is or may be relevant to the officer's inspection, examination, investigation, inquiry or test.

**(7)** The individual who is questioned pursuant to subsection (6) may request to be accompanied and may be accompanied by another person during the questioning.

**(8)** Subject to subsection 43(4), time spent by a committee member, representative or employee in accompanying or consulting with an officer during an inspection is deemed to be work time for which the committee member, representative or employee shall be paid by the employer at the applicable rate.

**Power to issue stop work order**

**51** Where an officer determines that any device, equipment, machine, material or thing to be used by an employee or self-employed person

(a) is unsafe; or

(b) does not comply with the standards prescribed by this Act or the regulations,

the officer may order the supplier or any other person to stop selling, renting, leasing or otherwise supplying the device, equipment, machine, material or thing to any employer, employee or self-employed person.

**Power to require reports, assessments and tests**

52 Where

(a) an officer determines that there may be a risk to health or safety; and

(b) an employer, owner, contractor or constructor fails to establish that it would not be reasonably practicable to carry out the order,

the officer may order, at the expense of the employer, owner, contractor or constructor that the employer, owner, contractor or constructor, as the case may be,

(c) obtain a report or assessment from a person who possesses such special expert or professional knowledge or qualifications as are specified by the officer for the purpose of determining whether any biological, chemical or physical agent, material, equipment, machine, device, article, thing or procedure, in or about a workplace, conforms with this Act or the regulations or good professional practice; and

(d) cause any tests necessary to the production of the report or assessment to be conducted or taken.

Where an officer observes a violation of the legislation, the officer could issue a variety of orders:

1. An order could be issued to comply with the legislation within a set period of time (also known as a time based order).
2. An order could be issued, where the officer observed a hazard that was a serious danger to the people in the workplace, to stop work immediately on a machine or all or part of a facility (stop work order).
3. Where the officer and Director agreed that equipment was unsafe or did not comply with the proper standards, the officer could issue an order to a supplier to cease selling, renting, etc. the equipment (cease supplying order)
4. The Act allows the officer to order an employer or other party to do a test, take a sample or otherwise have a report produced with regard to a substance, a machine or other device. December 5, 1996

Ordering OH&S audits of a workplace: Sub-section 52(c) limits the power to require an assessment to things that are already "in or about a workplace." **Thus, if the officer limited an order for an OH&S audit to those items or procedures already at the workplace, an audit could legally be ordered**. An audit that asks about items that are not already present at the workplace cannot be ordered by section 52. Any officer considering issuing an order for an OH&S audit should discuss the situation with his Regional Manager first. February 8, 2000.

**Prohibition against disclosure of certain information**

**53** Except in accordance with this Act and the regulations, a person who, at the request of an officer, makes an examination, inquiry or a test pursuant to clause 47(i) shall not publish, disclose or communicate to a person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred pursuant to this Act or the regulations, and, for greater certainty, subsection 61(3) applies.

**Service of notice of decision and right to appeal**

**54** Where

(a) an officer conducts an investigation of a work refusal by an employee pursuant to subsection 43(1) and the employee or employer is not satisfied with the advice provided by the officer or the failure to provide advice; or

(b) a complaint of an alleged contravention of this Act or the regulations is investigated by an officer and the officer does not issue an order that, in the opinion of the complainant, is necessary for the health or safety of persons at the workplace,

and the employee, employer or complainant so requests, the officer shall serve the employee, employer or complainant, as the case may be, in writing, with notice of the officer's decision and, where the employee, employer or complainant is an aggrieved person, the employee, employer or complainant may appeal the decision pursuant to Section 67.

**Orders and consequences of orders**

**55 (1)** An officer may give an order orally or in writing to a person for the carrying out of any matter or thing regulated, controlled or required by this Act or the regulations, and may require that the order be carried out within such time as the officer specifies.

An officer can only issue an order which requires an action contrary to a collective agreement where the collective agreement requirement is in violation of the OH&S Act or the regulations. Where the collective agreement complies with the law the officer would not have the authority or the need to issue an order that would prevent the collective agreement from operating. Enforcement of collective agreements through other processes are available to both employers and employees. (July 20, 2001)

**(2)** Where an officer makes an oral order pursuant to subsection (1), the officer shall confirm the oral order in writing.

An oral order must be confirmed in writing. As a general rule, the oral order will be confirmed before the officer leaves the workplace, but the oral order will always be confirmed within one working day of being issued. December 5, 1996.

**(3)** For greater certainty, an oral order is effective pursuant to this Act before it is confirmed in writing.

**(4)** Where an officer makes an order pursuant to subsection (1) and finds that the matter or thing referred to therein is a source of danger or a hazard to the health or safety of a person at the workplace, the officer may order that

(a) any place, device, equipment, machine, material or thing not be used until the order is complied with;

(b) work at the workplace or any part of the workplace stop until the order to stop work is withdrawn or cancelled by an officer;

(c) the workplace or any part of the workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access thereto until the danger or hazard is removed.

**(5)** Where an order is made pursuant to clause (4)(c), no employer or supervisor shall require or permit an employee to enter the workplace or part of the workplace that is the subject of the order except for the purpose of doing work that is necessary or required to remove the danger or the hazard and only where the employee is protected from the danger or the hazard.

**(6)** Where an officer issues an order pursuant to this Section, the officer may affix to the workplace or to any device, equipment,

machine, material or thing a copy or notice of the order and no person except an officer shall remove the copy or notice unless authorized to do so by an officer.

**Compliance notices and determination of compliance**

**56** **(1)** Where an officer makes an order pursuant to this Act or the regulations, unless the officer records in the order that compliance with the order was achieved before the officer left the workplace, the person against whom an order is made shall submit to the officer a compliance notice within the time specified in the order.

**(2)** Where a compliance notice is required pursuant to subsection (1), the officer shall specify in the order the time within which the person against whom the order is made shall submit the compliance notice to the officer.

**(3)** Notwithstanding the submission of a compliance notice, a person against whom an order is made achieves compliance with an order made pursuant to this Act or the regulations when an officer determines that compliance is achieved.

During the transition from the old Act to the new Act, all orders issued under the old Act will have force and effect under the new Act. However, because the old Act did not require a compliance notice to be provided, an officer has a poor legal basis upon which to require such notices for orders issued under the old Act. May 1, 1997

**Prohibition against interference with officer**

**57 (1)** No person shall hinder, obstruct, molest or interfere with an officer in the exercise of a power or the performance of a duty pursuant to this Act or the regulations.

"hinder, obstruct, molest or interfere" collectively include any acts, gestures, verbalizations and/or omissions which: make it difficult for the officer to perform his duties; slow or impede the officer in the performance of their duties; actually prevent the officer from engaging in or completing their duties. - It is the purpose of the acts and not the result of the acts that determine whether a violation has occurred. This includes "attempts" to do the mentioned acts, as well as abusive or threatening language.

**(2)** No person shall knowingly furnish an officer with false information or neglect or refuse to furnish information required by an officer in the exercise of the officer's powers or performance of the officer's duties pursuant to this Act or the regulations.

the significance of "knowingly" and "willfully" as used in 57(2) and 57(3)(a) is **they connote a standard of proof different** than most other OHS offences. Aside from establishing the act was done, they **must also establish the person intended to do (or omit doing)** the act.

**(3)** A person who

(a) wilfully delays an officer in the exercise of the officer's powers or the performance of the officer's duties pursuant to this Act or the regulations; or

(b) fails to comply with a direction or summons of an officer given pursuant to this Act or the regulations or to produce any certificate or document that the person is required by this Act or the regulations to produce,

is guilty of obstructing the officer in the exercise of the officer's powers or the performance of the officer's duties pursuant to this Act.

Generally: once an officer has concluded their duties any act by a person **will not constitute a violation of section 57**;
- failure of a person to assist an officer is a violation of 57(4)
-an offence is committed under 57(2) if a person refuses to identify the name of a person holding a certain title: supervisor, committee member;
- failure to provide the inspector the name of a contractor or site supervisor of a project is a violation of 57(2)
- ignoring or refusal to acknowledge an officer after they have announced themselves would be a violation of 57(4)
December 13, 2002

**(4)** A person shall furnish all necessary means in that person's power to facilitate any entry, inspection, examination, testing or inquiry by an officer in the exercise of the officer's powers or performance of the officer's duties pursuant to this Act or the regulations.

## CHEMICAL SAFETY

### Restriction on use of chemicals

**58** Where a biological, chemical or physical agent or a combination of such agents is used or intended to be used in the workplace and its presence in the workplace or the manner of its use is, in the opinion of the Director, likely to endanger the health or safety of an employee, the Director may, by notice in writing to the employer, constructor, contractor or self-employed person, order that

(a) labelling be utilized to identify at least the presence and composition, including common or generic names, of the biological, chemical or physical agent, the risks associated with its use and the measures to be taken in case of emergency;

(b) the use, intended use, presence or manner of use be

(i) prohibited,

(ii) limited or restricted in such manner as the Director specifies,

(iii) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies; or

(c) labelling be in accordance with applicable federal and Provincial regulations.

**Duty of employer to prepare a list of chemicals**

**59 (1)** Subject to Section 61, unless the employer has received from the Director specific written direction to the contrary and the direction has not been revoked by the Director, the employer shall prepare a list of all chemical substances regularly used, handled, produced or otherwise present at the workplace that may be a hazard to the health or safety of the employees or that are suspected by the employees of being such a hazard, and the list shall identify all chemical substances by their common or generic names where they are known to the employer.

A binder that contains the MSDSs for a workplace would be acceptable as the "list" called up under 59(1) so long as the binder contains an MSDS for all chemicals "regularly used, handled, produced or otherwise present at the workplace that may be a hazard to the health or safety of the employees or that are suspected by the employees of being such a hazard". Note that various classes of chemicals that may be hazards may not have MSDS (i.e. drugs, pesticides and certain other chemicals are exempted from the MSDS requirements of WHMIS). October 12, 2000.

**(2)** The list referred to in subsection (1) shall include the trade name and the address of the supplier and manufacturer of any chemical substance, the chemical composition or common or generic name of which is unknown to the employer.

**(3)** The employer shall advise the committee at the workplace or the representative, if any, of the list referred to in this Section and any amendments to the list and, where there is no committee or representative, the employer shall advise the employees, the union, if any, a self-employed person and an officer upon request by any of them.

Sub-section 59(3) actually says "advise" the JOHSC or representative, as opposed to "make available" the list. However, if a company refuses to make the list available, the Officer may consider the following parts of the OH&S Act:
35(3) - Duty of employer to provide certain information
38(1)(a)(ii) - Availability of information at workplace.
October 12, 2000.

**Duties of suppliers and manufacturers**

**60** **(1)** A supplier or manufacturer of a chemical substance shall, at the request of the Director, provide the following information with respect to a chemical substance referred to in subsection 59(1):

(a) the ingredients and their common or generic name or names;

(b) the composition and properties;

(c) the toxicological effect of the chemical substance;

(d) the effect of exposure to the chemical substance, whether by contact, inhalation or ingestion;

(e) the protective measures used or to be used regarding the chemical substance; and

(f) the emergency measures used or to be used to deal with exposure to the chemical substance.

**(2)** Where a supplier or manufacturer fails to provide the information referred to in subsection (1) within such time as is specified by the Director, the chemical substance for which the information has been requested is deemed to be an unsafe material and an order may be made pursuant to Section 51.

## TRADE SECRETS

### Extent of right to withhold trade secrets

**61 (1)** Notwithstanding anything contained in this Act or the regulations, an employer, a supplier or a chemical manufacturer may withhold trade secrets or information that might disclose a trade secret and the identity of a specific chemical, including the chemical name and other specific identification of a hazardous chemical, provided that the specific chemical identity is made available to health professionals in accordance with the procedures established by regulations made pursuant to this Act.

Where the identity of a specific chemical is considered a trade secret by the employer, supplier or manufacturer, the disclosure of information that may disclose that secret need not be provided. December 5, 1996

However, where there is a medical emergency and the name of the chemical is required for treatment, the information must be provided to a physician or nurse. The health professional that receives the information may be required to sign a confidentiality agreement. December 5, 1996

**(2)** Where a treating physician or nurse determines that

(a) a medical emergency exists; and

(b) the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment,

an employer, a supplier or a chemical manufacturer shall immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse regardless of the existence of a written statement of need or a confidentiality agreement, but the employer, supplier or chemical manufacturer may require a written statement of need and confidentiality agreement in accordance with regulations made pursuant to this Act as soon as circumstances permit.

There are Disclosure of Information Regulations under the Act that address in more detail the provisions with regard to a trade secret. December 5, 1996

**(3)** Notwithstanding Section 35, no person shall publish, disclose or communicate to a person a secret manufacturing process or trade secret acquired, furnished, obtained or received pursuant to this Act or the regulations.

An expert used under Section 47(i) to assist an officer must maintain confidentiality with regard to the information obtained while in the workplace on an inspection. December 5, 1996.

## MEDICAL INFORMATION

### Disclosure of medical information

**62 (1)** Notwithstanding Section 35, no person shall disclose information obtained in a medical

**Custody of Health Records Upon The Departure of a Health Professional**

examination, test, X-ray or hospital record of an employee made, taken or provided pursuant to this Act except in a form calculated to prevent the information from being identified with a particular person or case or with the permission of the employee.

Many companies employ doctors and nurses to collect medical information and advise on the results. This information is protected from disclosure by section 62. At issue is what happens to these records upon the departure from the company of the doctor or nurse who collected the information. To this issue, the following points are made:

1) the company will normally become the custodian of the records and be responsible for their security. In general though, they may not review or use the information.
2) the information may be turned over to a successor health professional for use provided that the successor is of equal or greater "rank" compared to the person who collected the information.
   For the purposes of this "ranking" procedure:
   i) a succeeding doctor may see all health information collected by anyone;
   ii) a succeeding nurse may see all health information except that collected by a doctor;
   iii) any other succeeding health professional (i.e. an occupational therapist or hygienist) may see all health information except that collected by a doctor or a nurse.
3) no one may ever disclose medical information that is traceable to a specific person without that person's consent.
4) employees must always be granted access to their own medical files and be given a reasonable opportunity to obtain copies of the files. However, the company may still keep the original.
5) It is permissible for the company to surrender the medical files to the individual employees or their designates. They may not however simply discard or destroy the files without the employees' consent. May 14, 1996

Where a person provides information "in confidence", the file should clearly identify the items and the party who has indicated they are "confidential" so as to avoid the risk of accidental release. December 5, 1996

The process for Department of Labour officers to obtain confidential medical or business information is outlined in Policy 13.2, Volume 1. When an officer believes there is a need for medical records, the officer may request their release from the patient. The records will be turned over directly to a medical consultant hired by the Department to advise the officer. The officer is never to have physical possession of medical records. Due to their confidential nature, medical records should never be included in an accident investigation file. They should be put in a separate, sealed envelope indicating their confidential nature and that the Executive Director's authority is required before the envelope

may be opened. February 8, 2000.

**(2)** No person to whom information is communicated in confidence pursuant to this Act or the regulations

(a) shall divulge the information, except in accordance with this Act and the regulations;

(b) is competent or compellable to divulge the information before a court or other tribunal or in any other proceeding.

Where an officer requests or is provided confidential information (medical/business), a release form should be signed by the record owner prior to the releasing or accepting the information. Sample release forms have been provided in the Policy and Procedures Manuals. Specifically excluded from release would be medical information or information received in confidence, where a release has not been received; information which could lead to the identification of specific employees, where such disclosure may place an employee at risk. File information is not to be released unless the Division has received a formal Freedom of Information request or appropriate legal documentation to require the release of information. May 15, 1997

All files with the Division are to be handled, stored, saved and destroyed in accordance with the records retention schedule established for the Division . December 5, 1996

## ACCIDENTS

### Notice of accidents at the workplace

**63 (1)** The employer shall send written notice to the Director

(a) of a fire or accident at the workplace that occasions bodily injury to an employee, within seven days of its occurrence;

"Bodily injury" is deemed to include unconsciousness; loss of a substantial amount of blood; fracture of a leg or arm; amputation of a leg, arm, hand or foot; burns to a major part of the body, loss of sight in an eye and any injury that places life in jeopardy. May 15, 1997

See references for sub-section 29(3) for a discussion on the counting of days. July 23, 1998

(b) of an accidental explosion at the workplace, whether any person is injured or not, within twenty-four hours of its occurrence; and

Workplace is defined to include a vehicle used for work; therefore any accident which meets the criteria set out in 63(1)(a)(b)(c) needs to be reported to the Director of OHS (Feb.1, 2004)

(c) where at the workplace a person is killed from any cause or is injured from any cause in a manner likely to prove fatal, within twenty-four hours of the occurrence of the death or injury.

**(2)** A true copy of the notice of accident required to be given by an employer to the Workers' Compensation Board, pursuant to the *Workers' Compensation Act*, may be delivered or mailed to the Director as sufficient notice pursuant to this Section.

**(3)** Where a notice is required to be sent to the Director pursuant to this Section, the employer shall furnish the committee or representative at the workplace, if any, with a copy of the notice.

A "summary sheet" would not meet the requirements of this section; it must be copy of the notices sent to the Director. The copy could be a photocopy, carbon copy, or scanned image; i.e. a reproduction. (Jan 1, 2004)

**Disturbance of accident scene**

**64** Except as otherwise directed by an officer, no person shall disturb the scene of an accident that results in serious injury or death except as is necessary to

(a) attend to persons injured or killed;

(b) prevent further injuries; or

(c) protect property that is endangered as a result of the accident.

For the purposes of application, "serious injury" has the same definition as does "bodily injury" in section 63 of this Reference Guide. May 1, 1998

There is no automatic response to the disturbance of an accident scene. When an officer comes upon such disturbance, the following issues should be considered before sanctions are taken:
- the extent of the disturbance
- the impact of the disturbance on the ability of the officer to investigate the accident
- indications that the motive for the disturbance included a deliberate attempt to conceal evidence.

Officers should refer to the Enforcement Policy whenever enforcement issues arise. February 8, 2000.

**Duty to disclose accident information**

**65** Every person present at an accident when it occurred or who has any information relating to the accident shall, upon the request of an officer, provide to the officer such information respecting the accident as the officer requests.

## CODE OF PRACTICE

**Power to require code of practice**

**66 (1)** The Director may, in writing, require an employer to establish a code of practice or adopt a code of practice specified by the Director.

**(2)** A code of practice established or adopted pursuant to subsection (1) may be revised or required to be revised from time to time by the Director.

This creates a power to require mandatory codes pf practice. It also places various restrictions on the use of this power, especially the limitation that only the Executive Director can require one (and by necessary implication, allow a deviation from one). May 11, 1996

On the other hand, certain regulations create codes of practice that seem to be voluntary and subject to suspension by an officer (see the General Blasting Regulations). This duality has created some confusion. May 11, 1996

To clarify the situation, although both the Act and regulations use the term "code of practice," the two laws are actually referring to different types of legal instruments. Only codes of practice specifically adopted pursuant to section 66 of the Occupational Health and Safety Act are subject to the limitations of the Act. Codes that appear only in regulations have the same effect as "procedures" and are not limited by the requirements of section 66 of the Act. May 11, 1996

It is of note that when compliance is mandated, both codes of practice can be enforced and charges laid for a violation of either. May 11, 1996

The OH&S Division produces several documents generically called "Codes of Practice." These codes apply to various industries, such as forestry and asbestos abatement. Note that a code of practice can only be imposed by the Executive Director and only one company at a time. There is no ability for the Executive Director to make an entire industry do anything. Thus, the "Forest Professional" book and the other "Codes of Practice" are not mandatory for any firm unless the Executive Director so orders. February 6, 2000.

**APPEALS**

**Right to appeal and consequences of appeal**

**67 (1)** An aggrieved person may appeal

(a) an order made by an officer pursuant to this Act or the regulations;

(b) the decision of an officer not to issue an order;

(c) the decision of an officer to advise an employee to return to work or the decision to provide no advice, pursuant to clause 43(1)(c); or

(d) any decision for which a right of appeal to the Director is provided in the regulations,

within fourteen days after the order or decision is served on the recipient, by making written application to the Director.

See references for sub-section 29(3) for a discussion on the counting of days. July 23, 1998

**(2)** Where the aggrieved person who appeals pursuant to subsection (1) has sufficient authority in the workplace to ensure that the application for appeal is posted, the aggrieved person shall post a copy of the application and, where the aggrieved person does not have such authority, the aggrieved person shall serve a copy of the application on the employer and the employer shall communicate it in accordance with Section 39(1).

**(3)** On an appeal pursuant to subsection (1), the Director

(a) may consider new information including, but not limited to, information provided by any aggrieved person;

(b) shall summarily review and decide the matter and may, by order, confirm, vary, revoke or suspend the order or decision appealed from or make any order or decision that an officer may make pursuant to this Act.

"Shall summarily" is meant to denote an obligation to be undertaken without delay. Once a decision is reached by t he Director there is no legislative authority to delay release of the order. Any unreasonable delay, that cannot be supported by legislation or practice, may be deamed a refusal to carry out a statutory duty. (December 3, 2001)

**(4)** The Director is not disqualified from hearing an appeal by reason only that the Director, in the course of performing the Director's powers, duties or functions pursuant to this

Act, receives information regarding the appeal or communicates with a person concerning the matter appealed.

**(5)** Subject to subsection (6), an appeal of an order or decision pursuant to subsection (1) does not suspend the operation of the order or decision.

**(6)** Subsection (5) does not apply to an appeal of an order of an officer regarding a provision referred to in subsection 46(1).

**(7)** Notwithstanding subsection (5), the Director may order the suspension of the operation of an order until the appeal is disposed of.

Generally, the order of an officer that is appealed is presumed not to be suspended during the appeal, unless the Director makes that decision. However, an order for payment of wages, etc. or with regard to discriminatory action is suspended pending the outcome of the appeal. December 5, 1996

**(8)** An order or decision of the Director made pursuant to subsection (3) that is not appealed pursuant to subsection 69(1) is final and binding.

**(9)** The Director shall provide a copy of the Director's decision to

(a) the employer;

(b) the aggrieved person who appealed; and

(c) any other aggrieved person who has made representations in relation to the matter appealed,

and the employer shall communicate the decision in accordance with subsection 39(1).

**Appeal panels**

**68** **(1)** The Minister shall

(a) seek recommendations from labour organizations and employer associations on the identification of persons to be included in the list of persons established by the Governor in Council pursuant to subsection (2); and

(b) provide advice to the Governor in Council regarding the list of persons.

**(2)** After receiving the advice provided by the Minister pursuant to clause (1)(b), the Governor in Council shall establish a list of persons from which an appeal panel shall be designated pursuant to subsection (3).

**(3)** Where an appeal has been filed pursuant to subsection 69(1), the Minister shall designate an appeal panel to hear the appeal.

**(4)** Subject to subsection (5), an appeal panel designated pursuant to subsection (3) shall be composed of

(a) one person representing employees;

(b) one person representing employers; and

(c) one person to act as chair of the appeal panel,

chosen from the list established pursuant to subsection (2).

**(5)** Where the parties to an appeal agree to have the appeal heard by only one person, the appeal panel shall be composed of one person designated by the Minister from the list established pursuant to subsection (2).

**(6)** Before acting as a member of an appeal panel, an appeal panel member shall take and subscribe before a judge of the Supreme Court of Nova Scotia and file with the Minister an oath or affirmation of office in the following form or to like effect:

> I do solemnly swear (*or* affirm) that I will faithfully, truly and impartially, to the best of my judgement, skill and ability, execute and perform the office of member of any appeal panel to which I accept an appointment

pursuant to the *Occupational Health and Safety Act* and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matters brought before the appeal panel. So help me God.

**(7)** An appeal panel and each member of an appeal panel has the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

**(8)** For greater certainty, an appeal panel may receive any evidence or information on oath, affidavit or otherwise as, in its discretion, it deems fit and proper, whether or not it is admissible as evidence in a court of law.

**(9)** The Director has standing as a party in any case that is appealed to an appeal panel.

**(10)** Except where the parties to an appeal agree that one person may hear the appeal, three panel members of an appeal panel constitute a quorum and a decision of any two panel members is the decision of the appeal panel.

**(11)** The members of an appeal panel shall be paid

(a) such remuneration as may be fixed by the Governor in Council, which may be in a nominal amount and may be set to a maximum rate per appeal; and

(b) the reasonable expenses incurred by the member in the course of carrying out the member's duties for the appeal panel.

**Right to appeal and consequences of appeal**

**69 (1)** An aggrieved person may appeal an order or decision of the Director made pursuant to this Act or the regulations to an appeal panel designated to hear the appeal pursuant to subsection 68(3).

**(2)** An appeal pursuant to subsection (1) shall be initiated by filing a notice of appeal with the Deputy Minister of Labour within twenty-one days of the date of the order or decision being appealed.

See references for sub-section 29(3) for a discussion on the counting of days. July 23, 1998

**(3)** A notice of appeal filed pursuant to subsection (2) shall

(a) identify and state the decision appealed from;

(b) set out the grounds of the appeal and the relief requested, including any request for the suspension of all or a portion of the order or decision appealed from; and

(c) include any other information required pursuant to the regulations.

**(4)** Where the aggrieved person who appeals pursuant to subsection (1) has sufficient authority in the workplace to ensure that the notice of appeal is posted, the aggrieved person shall post a copy of the notice and, where the aggrieved person does not have such authority, the aggrieved person shall serve a copy of the notice on the employer and the employer shall communicate it in accordance with subsection 39(1).

**(5)** On receipt of a notice of appeal,

(a) the Deputy Minister of Labour shall provide a copy of the notice of appeal to the members of the appeal panel designated by the Minister to hear the appeal; and

(b) the appeal panel shall hold a hearing that provides any aggrieved persons who have so requested the opportunity to present evidence and make representations, in accordance with the regulations.

**(6)** An appeal panel may, by order, confirm,

vary, revoke or suspend the order or decision appealed from or make any order that an officer is empowered to make pursuant to this Act.

**(7)** Subject to subsection (8), an appeal of an order or decision pursuant to subsection (1) does not suspend the operation of the order or decision.

**(8)** Subsection (7) does not apply to an appeal of an order of the Director regarding a provision referred to in subsection 46(1).

**(9)** Notwithstanding subsection (7), an appeal panel may order the suspension of the operation of an order or decision until the appeal is disposed of.

**(10)** The chair of an appeal panel shall provide a copy of the decision of the appeal panel to

(a) the employer;

(b) the aggrieved person who appealed; and

(c) any other aggrieved person who has made representations in relation to the matter appealed,

and the employer shall communicate the decision in accordance with subsection 39(1).

**Jurisdiction of appeal panels and court review**

**70** **(1)** Subject to subsection (2), an appeal panel has exclusive jurisdiction to determine all questions of

(a) law respecting this Act;

(b) fact; and

(c) mixed law and fact,

that arise in any matter before it, and a decision of an appeal panel is final and binding and not open to review except for error of law or jurisdiction.

**(2)** The review of a decision of an appeal panel shall be conducted

(a) by the Nova Scotia Court of Appeal, and only with leave of that Court; and

(b) with recognition that the appeal panel is established, for the purpose of this Act, as an expert body.

**(3)** The Director has standing as a party in a review conducted pursuant to subsection (2).

## ENFORCEMENT

### Registration of decision or order with Supreme Court

**71 (1)** A final decision or order of an arbitrator, an officer, the Director or an appeal panel regarding a claim arising from subsection 30(6), 33(5), 42(1), 43(4), 43(6), 43(7), 45(2) or 50(8) or subclause 46(1)(a)(ii) may, for the purpose of enforcement thereof, be registered with the Supreme Court of Nova Scotia and shall be enforced in the same manner as a judgment of that Court.

The decision or order of an officer, Director or Appeal Panel can be enforced in the Supreme Court of Nova Scotia as an order of the Court. The condition applies to the decision of an arbitrator with regard to a grievance arbitration involving discriminatory action. December 5, 1996

With regard to matters involving the payment of wages, salaries or benefits, the decision or order of an officer, Director or Appeal Panel can also be enforced as an order of the Labour Standards Tribunal. This was provided because the Labour Standards Tribunal has far reaching authority to enforce the payment required. December 5, 1996

**(2)** To register a final decision or final order referred to in subsection (1) with the Supreme Court of Nova Scotia, the Director may make a certified copy of the decision or order, upon which shall be made the following endorsement, signed by the Director:

> Register the within with the Supreme Court of Nova Scotia.
>
> Dated this . . . . . day of . . . . . , 19.....
>
> . . . . . .
> Director

**(3)** The Director may forward the certified copy referred to in subsection (2), so endorsed, to a prothonotary of the Supreme Court of Nova Scotia who shall, on receipt of the certified copy, enter it as a record and it shall thereupon be registered with the Supreme Court and enforceable as a judgment of that Court.

**(4)** Where a decision or order referred to in subsection (1) is registered with the Supreme Court of Nova Scotia, a subsequent decision or order rescinding or varying the first-mentioned decision or order may, in the same manner, be registered with the Supreme Court and enforced in the same manner as a judgment of the Supreme Court.

### Enforcement of final decision or order

**72 (1)** The Director may request the Director of Labour Standards to enforce a final decision

or order of an officer, the Director or an appeal panel regarding a complaint that an employer has failed to pay wages, salary, pay or a benefit entitlement required pursuant to subsection 30(6), 33(5), 42(1), 43(4), 43(6), 43(7), 45(2) or 50(8) or subclause 46(1)(a)(ii).

**(2)** A decision or order referred to in subsection (1) shall, for the purpose of enforcement pursuant to subsection (1), be made an order of the Labour Standards Tribunal and may be enforced in the same manner as an order of the Labour Standards Tribunal may be enforced.

**(3)** To make a final decision or order an order of the Labour Standards Tribunal, the Director shall make a certified copy of the decision or order, upon which shall be made the following endorsement, signed by the Director:

> Make the within an order of the Labour Standards Tribunal.
>
> Dated this . . . . . day of . . . . . , 19.....
>
> . . . . . .
> Director

and the Director shall forward the certified copy, so endorsed, to the Director of Labour Standards and the Labour Standards Tribunal.

**(4)** The Director of Labour Standards may enforce a final decision or order referred to in subsection (1) as if the decision or order were an order made by the Labour Standards Tribunal under Section 26 of the *Labour Standards Code* and, for greater certainty, Sections 87, 88, 89A, 90 and 90A of the *Labour Standards Code* apply *mutatis mutandis*.

**(5)** Where the Director

(a) provides the Director of Labour Standards with a certified copy of an order of an officer, the Director or an appeal panel regarding a complaint that an employer has failed to pay wages, salary, pay or a benefit entitlement

required pursuant to subsection 30(6), 33(5), 42(1), 43(4), 43(6), 43(7), 45(2) or 50(8) or subclause 46(1)(a)(ii), whether the order is final or not; and

(b) requests the Director of Labour Standards to treat the order as a complaint pursuant to Section 81 of the *Labour Standards Code*,

the Director of Labour Standards may exercise the power set out in Section 85(1) of the *Labour Standards Code* and subsections 85(2), 85(3), 85(3A) and 85(4) of the *Labour Standards Code* apply.

**(6)** Any money received by the Labour Standards Tribunal as a result of a request made by the Director pursuant to clause 5(b) shall be held in trust by the Labour Standards Tribunal for the employer concerned.

**(7)** Where

(a) the appeal period has expired; or

(b) any appeal has been disposed of,

whichever is later, regarding an order or decision of an officer, the Director or an appeal panel respecting payment, by the employer to the employee, of money held in trust pursuant to subsection (6), the Labour Standards Tribunal shall pay the employee from the trust money up to the amount specified in the order and the surplus, if any, shall be paid to the employer.

**(8)** Where a decision is made an order of the Labour Standards Tribunal, a decision or order rescinding or varying the first-mentioned decision is deemed to rescind or vary the order of the Labour Standards Tribunal and may be made an order of the Labour Standards Tribunal in accordance with this Section.

**Power to arrest**

**73** **(1)** A police officer who has reasonable and probable grounds to believe that a person is failing to comply with an order issued pursuant to subsection 55(4) may arrest the person without warrant and shall take the person before a justice as soon as practicable.

**(2)** A person taken before a justice pursuant to subsection (1) is entitled to an immediate hearing but, if a hearing cannot then be had, the person shall be released from custody on giving a personal undertaking to appear to answer to the charge at such time and place as shall then be fixed by the justice.

**(3)** A police officer who arrests a person pursuant to subsection (1) shall promptly inform the person of the reason for the arrest and of the right to retain and instruct counsel without delay.

**Offences and penalties**

**74 (1)** A person who

(a) contravenes this Act or the regulations; or

(b) fails to comply with

(i) an order or direction made pursuant to this Act or the regulations, or

(ii) a provision of a code of practice adopted pursuant to Section 66,

is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred and fifty thousand dollars, or to a term of imprisonment not exceeding two years, or to both a fine and imprisonment.

**(2)** In addition to a fine imposed pursuant to subsection (1) or (3), the court may impose a fine not exceeding twenty-five thousand dollars for each additional day during which the offence continues.

**(3)** Where a person is convicted of an offence pursuant to this Act and the court is satisfied that, as a result of the commission of the offence, monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine imposed pursuant to subsection (1) or (2), a fine in an amount equal to the estimation by the court of the amount of the monetary benefits.

**Powers of court on conviction**

**75 (1)** Where a person is convicted of an offence pursuant to this Act, in addition to any other punishment that may be imposed pursuant to this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order

(a) directing the offender to publish, in the manner prescribed, the facts relating to the offence;

(b) directing the offender to pay to the Minister, in the manner prescribed by the regulations, an amount for the purpose of public education in the

(i) safe conduct of the activity in relation to which the offence was committed, and

(ii) principles of internal responsibility provided for in this Act;

(c) on application by the Director made within three years after the date of conviction, directing the offender to submit to the Director such information with respect to the activities of the offender as the court considers appropriate and just in the circumstances;

(d) directing the offender to perform community service, subject to such reasonable conditions as may be imposed in the order;

(e) directing the offender to provide such bond or pay such amount of money into court as will ensure compliance with an order made pursuant to this Section;

(f) requiring the offender to comply with such other reasonable conditions as the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences,

but the total of any moneys payable or direct

cost incurred by the offender pursuant to this subsection and subsection 74(1) shall not exceed the maximum amount payable pursuant to subsection 74(1).

**(2)** Where an offender fails to comply with an order made under clause (1)(a) directing the publication of the facts relating to the offence, the Director may publish the facts in compliance with the order and recover the costs of publication from the offender.

**(3)** Where the court makes an order pursuant to clause(1)(b) directing the offender to pay an amount for the purpose of education or the Director incurs publication costs pursuant to subsection (2), the amount or costs constitutes a debt due to Her Majesty in right of the Province and may be recovered as such in a court of competent jurisdiction.

**(4)** An order made pursuant to subsection (1) comes into force on the day on which it is made or on such other day as the court may order and shall not continue in force for more than three years after that day.

**Deemed act or omission of employer**

**76 (1)** In a proceeding or prosecution against an employer pursuant to this Act or the regulations, the act or omission of a manager, a superintendent or another person who exercises management functions for the employer is deemed to be the act or omission of the employer.

**(2)** Notwithstanding subsection (1), the act or omission of a manager, a superintendent or another person who exercises management functions for the employer is not the act or omission of the employer where it is proven that the employer took every precaution reasonable in the circumstances to ensure that the act or omission would not occur and the employer

(a) did not have actual knowledge of, or could not reasonably have known of, the act or omission; and

(b) did not expressly or impliedly consent to the act or omission.

The Act assumes that the employer is liable for any action of the manager or supervisor; the Act requires the employer to prove that it took every reasonable precaution to ensure the offence did not occur and that the employer did not have knowledge or did not consent to the action. December 5, 1996

**Participation in offence**

77 An officer, director, manager or agent of a corporation who directs, authorizes, assents to, acquiesces or participates in the commission of an offence pursuant to this Act is guilty of that offence.

**Immunity from civil action**

**78** No action lies or shall be instituted against an officer, the Director, an appeal panel, a member of an appeal panel or the Director of Labour Standards where that person or body is acting pursuant to the authority of this Act or the regulations for any loss or damage suffered by a person because of an act or omission done in good faith by the person or body

(a) pursuant to, or in the exercise or supposed exercise of, a power conferred by this Act or the regulations; or

(b) in the carrying out, or supposed carrying out, of a function or duty imposed by this Act or the regulations.

Good faith means the officer did not have an ulterior motive for making the decision. December 5, 1996

**Limitation period for prosecution**

**79** A prosecution for an offence pursuant to this Act shall not be commenced more than two years after the later of

(a) the date on which the offence was committed; or

(b) the date on which evidence of the offence first came to the attention of an officer.

**Analysts**

**80** (1) The Minister may appoint as an analyst any person who, in the opinion of the Minister, has the qualifications and experience to be so appointed and an analyst shall perform such functions and carry out such duties as may be determined by regulation.

(2) No document of an analyst may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the document.

(3) The party against whom a document of an analyst is produced may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination.

**Proof of orders or other documents**

**81** In any proceeding or prosecution pursuant to this Act,

(a) a copy of an order, decision or certificate purporting to have been made or issued pursuant to this Act or the regulations and purporting to have been signed by a person authorized to make or issue the order, decision or certificate;

(b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom, given or made pursuant to this Act or the regulations and purporting to be certified by an officer or an analyst;

(c) a document purporting to certify the result of a test or an analysis of a sample of air and setting forth the concentration or amount of a biological, chemical or physical agent in a workplace, or part of a workplace, and purporting to be certified by an officer or an analyst;

(d) a document purporting to certify the result of a test or an analysis of any equipment, machine, device, article, thing or substance and purporting to be certified by an officer or an analyst;

(e) a document purporting to be signed by the Director stating that a report, request, notice or order was or was not given or received;

(f) a document purporting to be signed by a person authorized pursuant to this Act or the regulations to issue a certificate of examination or authorize a deviation, stating that on a specified day or during a specified period a person named in the document was or was not the holder of a certificate of examination or authorized for a deviation of regulations pursuant to this Act;

(g) a document setting out with reasonable particularity the conviction and sentence of a person for an offence pursuant to this Act or the regulations purporting to be signed by

(i) the person who made the conviction, or

(ii) the prothonotary or clerk of the court in which the conviction was made,

shall be admitted in evidence as *prima facie* proof of the order, decision, certificate or document and the contents of the order, decision, certificate or document, without proof of the signature or official character of the person appearing to have signed the order, decision, certificate or document, as the case may be.

## REGULATIONS

### Regulations

**82 (1)** The Governor in Council may make such regulations as the Governor in Council considers necessary or advisable for the purpose of this Act or to ensure the health or safety of all persons at a workplace and, without limiting the generality of the foregoing, the Governor in Council may make regulations

(a) requiring an employer or class of employers to prepare a written policy or a written program;

(b) setting out the health or safety standards to be established and complied with at workplaces or classes of workplaces;

(c) establishing conditions regarding the design, construction and use of plants or undertakings in order to protect the health and safety of employees;

(d) prescribing standards for devices, equipment, machines, material and things including, but not limited to, the adoption by reference of any codes or standards, and providing for the prohibition of the use, sale, rental, lease or supply of any devices, equipment, machines, materials or things that do not comply with the prescribed standards;

(e) prohibiting or controlling the manufacture, supply, storage, handling or use of any device, equipment, machine, chemical, biological or physical agent or material in order to protect the health or safety of employees;

(f) respecting the safe use of any device, equipment, machine, material or thing;

(g) imposing requirements regarding the testing, labelling or examination of any material that may affect the health and safety of employees;

(h) requiring the making of arrangements by employers for measuring and

monitoring the atmospheric or other conditions of workplaces;

(i) requiring the use of certain protective devices, equipment or clothing by persons at a workplace or class of workplaces;

(j) requiring the making of arrangements by employers for the prevention of occupational disease and for securing the health of employees including, but not limited to, arrangements for medical examinations and health surveys;

(k) requiring and governing medical facilities or first-aid facilities to be located at workplaces;

(l) prescribing

(i) the making of reports by committees,

(ii) procedures for the operation of committees including, but not limited to, minimum requirements for the contents of, and a retention period for, minutes and records of committees,

(iii) the activities that may be carried on by committees or representatives within the functions described in subsection 31(1) or 33(6);

(m) altering the frequency of committee meetings required pursuant to this Act;

(n) prescribing additional requirements for the training of committee members including, but not limited to, requiring employers or classes of employers to provide for and pay for the training;

(o) increasing or decreasing the period of employment to be considered in a determination of the number of persons regularly employed at a workplace;

(p) excluding any profession, employee, employer, workplace, project, owner, occupation, industry, self-employed

person or dependent contractor from all or part of the application of this Act or the regulations;

(q) designating occupations as hazardous occupations;

(r) determining the amount, manner and method of payments out of the Accident Fund;

(s) defining education and research to be paid for out of the Accident Fund;

(t) prescribing educational institutions or classes of educational institutions for which the curricula must include instruction in the principles of occupational health and safety contained in this Act;

(u) designating agencies, divisions or parts of other departments of the Government, or any other body constituted by an enactment, and their employees, to become part of the Division;

(v) prescribing the type of information to be transferred, the form in which information shall be transferred and the frequency of transfer of the information to be exchanged between the Division and the Workers' Compensation Board;

(w) prescribing records to be kept by employers and submitted to the Division;

(x) requiring the making of reports by employers to the Division;

(y) requiring the filing of drawings, layouts and specifications;

(z) prescribing information required to be provided by owners and the manner and form of its communication;

(aa) imposing requirements on health insurers and health-care agencies to provide to the Division statistical reports regarding occurrences of injury and disease arising from employment;

(ab) prescribing procedures with respect to

disclosure of information that is considered trade secrets;

(ac) prescribing confidentiality protection for trade secrets;

(ad) respecting the publication and distribution in the workplace of this Act and the regulations made pursuant to this Act;

(ae) restricting the performance of certain tasks to persons having certain qualifications;

(af) prescribing the duties and functions of analysts;

(ag) establishing boards of examiners for the certification of occupational qualifications and providing processes for the issuance and revocation of certificates of examination;

(ah) altering the standard or processes according to which an application for a deviation from regulations must be considered pursuant to this Act;

(ai) prescribing regulations for which a deviation is not permitted pursuant to this Act;

(aj) modifying the provisions of the *Labour Standards Code* for the purposes of enforcement pursuant to this Act;

(ak) interpreting Sections 23 and 29 and subsections 33(1), (2) and (3) and 38(1) in the context of an industry, occupation, project or workplace;

(al) establishing a means of identifying the persons referred to in Section 23 and the manner of communicating the identity of the persons;

(am) enabling the adoption of a code of practice at a workplace containing one or more provisions from a regulation that would not otherwise apply to the workplace;

(an) respecting the administration of a system of administrative penalties;

(ao) respecting appeals including, but not limited to,

(i) who may be a party to an appeal,

(ii) limiting the amount of time available to parties to make representations at appeal hearings,

(iii) the contents of a notice of appeal,

(iv) the appeal of matters other than those permitted pursuant to this Act,

(v) the conduct and procedure of appeals generally;

(ap) prescribing forms for use pursuant to this Act;

(aq) prescribing charges to recover the cost of services pursuant to this Act and fees in relation to appeals and deviations, certificates, licences, permits, review of documents and filing of documents;

(ar) defining words or expressions used but not defined in this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

**Authorized deviation from regulations**

**83 (1)** Where an application is made in writing to the Director for authorization to deviate at a workplace or workplaces from a provision of the regulations, unless the standard to be used by the Director in considering an application is altered by regulation, the Director may authorize the deviation where the Director is satisfied that the deviation affords protection for the health and safety of employees equal to or greater than the protection prescribed by the regulations from which the deviation is requested.

A written application must be made to the Director for a deviation. December 5, 1996.

Deviations are feasible to allow alternative ways of meeting specified exceptions to a *conditional* prohibition in the Regulations; **they are not** feasible as an equivalent. Where a prohibition (clause, section in the Act) is subject to an exception (i.e. it is conditional) a comparison of the proposed deviation can be made with specifications in the exceptions and an equivalency may be proven. Where a prohibition is absolute and unqualified by any express or implied exception, there is no allowable activity to set a comparative standard or prove equivalent. (July 20, 2001)

**(2)** The Director may attach such terms and conditions to an authorization of a deviation pursuant to subsection (1) as the Director considers advisable.

**(3)** Subsections (4) to (13) apply to an application for a deviation made pursuant to subsection (1) unless

(a) the processes required pursuant to those subsections are altered by regulation; or

(b) a notice period is reduced or eliminated pursuant to subsection (15).

**(4)** Where the workplace location or locations exist for which a deviation pursuant to subsection (1) is requested, unless

(a) the committee or representative at a workplace, if any; or

(b) where there is no committee or representative, all the employees at the workplace,

agree otherwise, upon applying for a deviation, the applicant for the deviation shall post a copy of the application, ensure it remains posted for at least twenty-eight days and furnish a copy to the committee or representative, if any, at the workplace.

The application must be posted in the workplace for 28 days before the Director can make a decision on the application. If the application is made prior to the establishment of the workplace, the application must be published 28 days prior to the Director making a decision. December 5, 1996

**(5)** Where the workplace location or locations for which a deviation pursuant to subsection (1) is requested are not yet in existence, the applicant shall, upon applying for a deviation, publish, at the applicant's cost, a notice of the application for a deviation

The 28 day period can be waived where the committee, safety representative or, where neither of those exist, all employees, agree to waive the notice period. December 5, 1996

(a) that contains information regarding the deviation being requested; and

(b) where it would reasonably be expected to come to the attention of persons interested in health and safety who might be affected by the decision regarding the deviation.

**(6)** After receiving an application for a deviation pursuant to subsection (1), the Director may conduct such consultation or give such notice of the application as the Director considers advisable.

**(7)** The applicant for a deviation pursuant to subsection (1) shall submit with the application, at the applicant's cost,

(a) the technical information required to enable the Director to determine the application;

(b) information with respect to the benefits and drawbacks to health and safety that might reasonably be anticipated if the deviation is authorized; and

(c) any fee prescribed by the regulations.

**(8)** The applicant for a deviation pursuant to subsection (1) for an existing workplace location or locations shall ensure that the information required pursuant to clauses (7)(a) and (b) is made available for examination at the applicant's workplace by the committee or representative, if any, and by the employees.

**(9)** The Director may make available the information required pursuant to clauses (7)(a) and (b) to any person for examination on request.

**(10)** A decision by the Director pursuant to subsection (1) shall

(a) not be made less then twenty-eight days following the date of the application; and

Clause 83(10(a) of the Occupational Health and Safety Act bars the Director from making a decision on a deviation before 28 days have passed. December 5 1996

A limited exception exists under subsection 83(15), where the Director may reduce or eliminate the time periods in cases where the Director wishes to review and perhaps cancel or suspend an existing deviation.

However, this exception is only available on a review of an existing deviation. It is not available for a new application. December 5 1996

(b) be accompanied by written reasons for the decision that shall include

(i) the information considered in arriving at the decision and the rationale for the decision;

(ii) the specifics of a deviation that is authorized, including the location of the workplace or workplaces where the deviation applies; and

(iii) the details of any terms or conditions attached to the authorization of a deviation.

**(11)** The applicant for a deviation pursuant to subsection (1) shall ensure that

(a) a copy of the Director's decision is

(i) posted for at least seven days, or longer if additional time is necessary to enable employees at the workplace to inform themselves of the content, and

(ii) furnished to the committee or representative, if any, at the workplace; and

(b) where a deviation is authorized, a copy of the Director's decision is posted and maintained throughout the time the deviation is in effect.

**(12)** The Director shall provide a copy of the decision referred to in subsection (10) to anyone from whom the Director has received a written response to the application for a deviation pursuant to subsection (1).

**(13)** In applying a regulation for which a deviation pursuant to subsection (1) is authorized, a deviation and any terms and conditions authorized pursuant to this Section shall, while the deviation is in effect, be substituted for the prescription or requirement in the regulations.

Where a deviation is granted, the affect of the deviation is that the specific provisions of the deviation replace the requirements of the regulation. December 5, 1996

**(14)** The Director may, at the initiative of the Director or upon application, reconsider, confirm, vary, revoke or suspend the

Where The Director discovers new information after

Director's decision regarding a deviation at any time when information is produced that, had it been known when the request for the deviation was determined previously, would reasonably be expected to have resulted in a different decision from the one made at that time, and subsections (1) to (13) apply with the necessary modifications.

**(15)** Notwithstanding the periods of notice required pursuant to this Section, where information that was not available at the time a decision was made by the Director regarding a deviation pursuant to this Section is produced that indicates that imminent danger might result as a result of the deviation, the Director may reduce or eliminate a period of notice required pursuant to this Section.

the original decision, the Director can revoke, vary or confirm the deviation decision without having to proceed through the regular deviation procedures and notices. December 5, 1996

## TRANSITIONAL PROVISIONS

**Alleged contravention under former Act**

**84 (1)** Where an employee has alleged in writing, pursuant to subsection 25(3) of the former Act, that an employer or a union has contravened subsection 25(2) of that Act, and at the time of the coming into force of this Act the matter has not been concluded pursuant to subsection (3) of that Section, the employee may, within thirty days of the coming into force of this Act, make a complaint pursuant to Section 46(1) of this Act, in which case this Act applies to the complaint and the complaint shall be heard, concluded and enforced pursuant to this Act.

**(2)** Where an employee referred to in subsection (1) does not make a complaint pursuant to Section 46(1) of this Act, the former Act applies to the complaint and the complaint shall be heard, concluded and enforced pursuant to that Act.

The 1985 Act had provided for a specific means of addressing discriminatory action complaints. That process has been repealed and replaced with another process. However, where a person lodges a complaint under the 1985 Act and has not had a final decision with regard to the complaint, that person can transfer the complain to the process under the new Act within 30 days of the proclamation of the Act (ie.- January 31, 1997). December 5, 1996

If the complainant does not choose to use the provisions of the new Act, the old Act will still be in force for purposes of the complaint process. December 5, 1996

**Enforcement under Act and substituted references**

**85** (1) Any regulation, order or direction made under the *Metalliferous Mines and Quarries Regulation Act*, the *Coal Mines Regulation Act* or the former Act or under any Act relating to occupational health and safety may be enforced as if the regulation, order or direction were made pursuant to this Act.

(2) Any reference in any Act of the Legislature or in any rule, order, regulation, by-law, ordinance or in any document whatsoever to the Occupational Safety Division of the Department of Labour and Manpower, the Occupational Health Division of the Department of Health, the Mine Safety Division of the Department of Mines and Energy or the Accident Prevention Division of the Workers' Compensation Board, whether such reference is by official name or otherwise, shall, as regards any subsequent transaction, matter or thing relating to the affairs or matters or any of them assigned to those divisions, be held and construed to be a reference to the Division, as defined in this Act.

The regulations, orders or directions under the *Coal Mines Regulation Act* or the *Metalliferous Mines and Quarries Act* or the 1985 Act may be enforced as if an order, regulation or direction under the new Act. December 5, 1996

**EFFECTIVE DATES**

**Coal Mines Regulation Act repealed**

**86** Chapter 73 of the Revised Statutes, 1989, the *Coal Mines Regulation Act,* is repealed.

**Metalliferous Mines and Quarries Act repealed**

**87** Chapter 284 of the Revised Statutes, 1989, the *Metalliferous Mines and Quarries Regulation Act*, is repealed.

**Former Act repealed**

**88** The former Act is repealed.

**Effectives dates**

**89** **(1)** Section 22 has effect on and after July 1, 1999, or such earlier day as the Governor in Council orders and declares by proclamation.

**(2)** Section 27 has effect on and after July 1, 1997.

**(3)** Section 28 has effect on and after January 1, 1998.

**(4)** Sections 86 and 87 come into force on such day as the Governor in Council orders and declares by proclamation.

**(5)** This Act, except for Sections 22, 27, 28, 86 and 87, has effect on and after January 1, 1997.

The Act will take effect on January 1, 1997, with the following exceptions:

1. The requirement for a safety policy will come into force on July 1, 1997.
2. The requirement for a safety program will come into force on January 1, 1998.
3. The requirements for health and safety to be taught at educational institutions will come into force on July 1, 1999. December 5, 1996

## APPENDIX A - Expansion of Employer Duties

**OH&S Status Of People Sentenced To Community Work** (May 1, 1997)

People sentenced to community work are not employees for the purposes of the OH&S Act. Thus, the Department of Justice does not owe them the duties and have the responsibilities that arise with their regular employees. However, they do have all the responsibilities they would have with respect to a volunteer.

OH&S officers will deal with the Department of Justice and people sentenced to community work in the same way they deal with other non-employee situations.

**Duties Owed by Universities to Research Technicians** (May 1, 1997)

University research technicians are often in a complex employment situation involving their professor (or immediate supervisor), the university and the funding authority. In such cases, it may be difficult to determine whether the university is an "employer" as defined in the OH&S Act. To aid in this determination of employer-status (and thus the duties owed as a result), the following guides may be used:

- is the university a sponsor or joint sponsor of the research?
- is the professor (or immediate supervisor) required by the university to do research?
- is university equipment used for the research?
- does the research technician also teach regular classes run by the university?
- does the university use the research results in its teaching activities?
- does the university use the research program in recruitment, fundraising or other promotional activities or in applications for additional grants?
- was the university a co-applicant for the research grant?
- are the funding arrangements "tied" to the particular university?
- does the funding agency pay grant money directly to the university (as opposed to paying it to the professor personally)?
- is there a written or oral contract between the university and other parties to the research as to the terms and conditions of the funding?
- is the technician paid through the university payroll office?
- does the technician participate in university employee benefit plans, such as dental or health insurance or WCB coverage?
- is the technician governed by general university rules concerning laboratory use and/or general policies on such matters as sexual harassment, employee discipline and health and safety? Is such governance at a higher level that applies to regular students at the university?
- do official forms (such as T-4 slips) identify the university as the employer?
- is the university responsible for any portion of the technician's employment cost, including a portion of salary or contributions to benefits?

Note that no one of these factors is decisive or necessarily more important than the other. Also, the absence of one or more of these factors would not be decisive. However, the more factors that are present, the more likely it is that the university is an employer as defined in the OH&S Act.

If in any particular cases, an officer is unclear as whether the university is an employer, the officer should gather information on as many of these factors as possible and submit the information to legal counsel, who will advise on the matter.

**Are Volunteers Employees?** (December 11. 2000)

Various agencies, most visibly local Fire Departments, use volunteers to provide their services. In general, such volunteers are not "employed" by these agencies though. Thus, they are not "employees" as contemplated by the Act.

The effects of this conclusion include:

1) the host agency has no obligation under the Occupational Health and Safety Act to provide services to these volunteers beyond the general obligation in section 13 to ensure the health and safety of all persons at or near the workplace (note that a place is not a "workplace" of the employer if none of its employees are found there);

2) Volunteers are not counted when determining numbers for joint occupational health and safety committees, first aid supplies and training, rest rooms or any other factor determined by the number of employees;

3) Volunteers are not bound by the duties set out in section 17 of the Occupational Health and Safety Act;

4) The Division is not obligated to investigate a work refusal by or provide services to a volunteer.

Given the obligations in 1), the further question arises as to what role should the Division play in enforcing employers' obligations to protect non-employees. This question is most effectively answered by referring to sub-section 9(a) of the Occupational Health and Safety Act (1996) that states:

> The Division shall be concerned with occupational health and safety and the maintenance of reasonable standards for the protection of the health and safety of employees and self-employed persons.

This wording instructs the Division to concern itself primarily with **occupational** health and safety and **employees and self-employed persons**. Other persons, including volunteers, are not to be a major focus of our activities. In line with that mandate, the policy of the OH&S Division will be to decline to issue orders that affect only the health and safety of persons who are neither employees nor self-employed persons. Orders are to be considered in cases where:

1) at least one employee or self-employed person is at risk, no matter how many other persons may be simultaneously at risk. In such cases, our response will deal solely with the employees or self-employed persons. Other persons will not be considered.

2) no employee nor self-employed person is immediately at risk, but one may be placed at risk if the employer does not ensure the health and safety of other persons. An example of this may be where a non-employee present at a worksite may do something that would create or increase a hazard to an employee.

More specifically:

1) Persons acting only as true "volunteer firefighters" do not have legal obligations under the Occupational Safety General Regulations or the Occupational Health and Safety Act itself.

2) A volunteer firefighter who happens to give service at a place where a paid firefighter is at work will still have no personal obligations under the Occupational Health and Safety Act or its regulations. However, if the unsafe conduct of a volunteer is a hazard to the paid worker, the **employer** has to have a strategy to address that problem.

## APPENDIX B - Jurisdictional Issues

The Act addresses workplaces under the jurisdiction of the Federal government, if and when it is determined that the Act will apply, either by the Courts or an agreement between the two levels of government. There are many grey areas where the law is not clear as to whether or not the Nova Scotian Government or the Federal Government has jurisdiction. However, it is the policy of the Department of Environment and Labour to assume to have the jurisdiction with regard to a situation where there is a safety or health hazard. The first priority is to address the hazard and then address the issue of which government has jurisdiction. If there is a question with regard to a jurisdictional issue that is non-urgent, the question can be sent to the main office and a lawyer will do a legal opinion. May 31, 1997

From a jurisdictional standpoint, federal facilities (such as airports) are complex entities. To help decide the extent of the Department of Environment and Labour's jurisdiction on such facilities, the following guidelines are provided.

**Case 1 - Property Owned by Federal Government and Occupied by a Federal Agency:**

Example: Transport Canada offices at an airport

Department of Environment and Labour has no jurisdiction over the federal agency or its employees. Any OH&S issues related to federal employees are to be referred to Human Resources Development Canada.

Department of Environment and Labour does have jurisdiction over any provincially-regulated contractors engaged by the federal agency and can regulate operational issues related to the provincially regulated entity (i.e. officers can enter premises to inspect, require JOHSC's, issue stop work orders to the entity, etc.).

Officers cannot issue orders dealing with the design, form and structure of the federally-owned building (i.e. to require a fire exit or increased ventilation), even though the federal government may be seen as an "owner" under the OH&S Act. Any OH&S issues dealing with the design, form and structure of the building are to be referred to Human Resources Development Canada.

**Case 2 - Property Owned by Federal Government and Leased to a Provincially Regulating Entity**

Example: Hotel or bookstore at an airport

Department of Environment and Labour can regulate operational issues related to the provincially regulated entity (i.e. officers can enter premises to inspect, require JOHSC's, issue stop work orders to the entity, etc.).

Officers cannot issue orders dealing with the design, form and structure of the federally-owned building (i.e. to require a fire exit or increased ventilation), even though the federal government may be seen as an "owner" under the OH&S Act. Any OH&S issues dealing with the design, form and structure of the building are to be referred to Human Resources Development Canada.

**Case 3 - Property Owned And Operated By A Provincially Regulated Entity Engaging In An Activity Integral To A Federal Activity**

Example: Plane de-icing contractor based near an airport or a privately owned hanger

Department of Environment and Labour has no jurisdiction over the employees or the facilities. Any OH&S issues are to be referred to Human Resources Development Canada.

**Case 4 - Retail Postal Outlets**

Until further direction is provided, the postal operations within retail outlets (such as drug or grocery stores) are to be considered federal workplaces and exempt from all aspects of Nova Scotia occupational health and safety laws. In addition, any questions or complaints from such workplaces are to be referred to Human Resources Development Canada - Labour Program for resolution. May 11, 1996

The remainder of the retail operations are to be considered provincial workplaces, with all Nova Scotia laws and services having full effect. May 11, 1996

This dual jurisdiction within a single workplace may cause some confusion for the workplace parties. In such cases, Divisional officers should try to explain the situation as clearly as possible. Where required, federal officers should be contacted to explain their role and requirements. May 11, 1996

**Case 5 - Shipyards**

On November 18, 2002 in the Halifax Provincial Court a decision was rendered by Judge Curran relating to Halifax Shipyards.

Judge Curran ruled that the Halifax Shipyard **falls** under Provincial Jurisdiction **no matter what area of the yard the work is performed in**. Judge Curran stated that just because the vessel being worked on falls under Federal Jurisdiction that has no effect on the jurisdictional status of the shipyard or shipyard employees.

**APPENDIX C - Employee Representation**

**Can A Supervisor Serve on a JOHSC or as a Health and Safety Representative?** (May 1, 1997)

The issue arises as to the definition of "employee," specifically as to whether an employee on lay-off, disability leave or other absence from the workplace may serve as a Joint Occupational Health and Safety Committee employee member or a Health and Safety Representative.

For the purposes of enforcement of the Act, Occupational Health and Safety Officers will consider the following factors as being indicative of employees who are **not** part of management:

- no substantial independent decision making authority to hire, fire, or to effectively recommend hiring or firing or discipline
- plays no substantial independent decision making role in developing policy, esp. ones with financial implications
- any direct authority over other employees is extremely limited (eg, lead hand on construction site)
- all significant personnel decisions are made at a higher level.

Note that neither the job title nor the occasional act of supervision is enough to define a person as a part of management.

**Can An Employee on Lay-Off or Other Absentee Status Serve on a JOHSC or as a Health and Safety Representative?** (May 1, 1997)

Sections 29 through 33 of the Occupational Health and Safety Act deal with the establishment and function of a Joint Occupational Health and Safety Committee and a Health and Safety Representative. Sub-sections 30(2), 33(1) and 33(2) limit who can be a worker representative by such words as "At least half of the members of a committee shall be employees at the workplace . . ." [underlining added].

The issue now arises as to the definition of "employee," specifically as to whether an employee on lay-off, disability leave or other absence from the workplace may serve as a Joint Occupational Health and Safety Committee employee member or a Health and Safety Representative.

For the purposes of enforcement of the Act, the officer would consider whether the intended role of the member or representative can be achieved where the length of the absence becomes a concern. The extent of union/employee support for retaining the individual in the position, the ability of individual employees still at the workplace to communicate with the member or representative, and the evidence that the employment relationship and awareness of conditions at the workplace are maintained should also be considered.

If the employee is no longer employed by the employer, or never was, they do not meet the requirements of the Act and can be neither member nor representative.

**Appointment of Non-Employees to a JOHSC** (May 1, 1997)

The appointment of JOHSC members is governed by section 30 of the Act. Sub-section 30(2) limits the employee representatives to other employees of the employer, thus precluding any person who is not an employee from serving as an employee representative. However, there are no restrictions on who may serve as an employer representative.

Thus, non-employees may serve on JOHSC's if they occupy employer seats only.

For workplaces considering adding non-employees to JOHSC's, officers may wish to bring up the following points:

1) Non-employees may have issues they wish to raise that would not be appropriate for a JOHSC, whose emphasis should be on OH&S, to discuss.

2) An employer will be required to deal with requests for responses to recommendations and requests for information from a JOHSC that includes non-employees in the same way as they respond to one that does not.

**Appendix D - Employer Responsibilities in "Work at Home" Situations** (May 2, 1998)

It is becoming increasingly common for employees to work away from the traditional office or factory - often in their private homes. An issue then arises as to the employer's responsibility for health and safety when the employee is working in their own home.

To clarify the issue, employers are held responsible for health and safety at all places where their employees work. This includes the employees' homes. The level of employer responsibility and care in the working area of an employee's home is to be assessed with exactly the same degree of comprehensiveness as work areas in employer-owned premises.

Note that the employer is only responsible for those aspects of home health and safety that arise out of the job. These could include such things as ensuring proper equipment set-up (ergonomics), safe wiring, handrails, provisions of washrooms, etc. Employers are not responsible for health and safety issues arising from activities outside of the working relationship. These could include, depending upon the precise circumstances, unsafe lawnmowers, child safety issues, safety while house cleaning in non-work areas, etc.

**Appendix E - Responsibility for Workers from a Personnel Agency** (May 2, 1998)

Where a company contracts with a personnel agency for workers, the issue of who is the actual employer becomes confused. To clarify the issue, both the personnel agency and the contracting company are regarded as employers (essentially, the worker has two bosses). When issuing orders or pursuing prosecution, the officer should consider which of these two employers:

1) did foresee or should have foreseen the hazard yet failed to take effective action to prevent the offence;

2) had the greater control over the workplace conditions or the greater ability to effect the required changes.

If there is doubt about as to whom to issue an order or whom to charge, the officer should contact their supervisor.

**Appendix F - Liability of Occupational Health and Safety Committee Members** (May 2, 1998)

The issue of liability of members of Joint Occupational Health and Safety Committees (JOHSC) arises in two ways - through the Occupational Health and Safety Act and through civil liability.

While theoretically possible to charge a JOHSC member for various offences under the Act (failing to meet, failing to keep minutes, etc.), such charges are tenuous at best and highly suspect considering the chilling effect they would have on JOHSC's and the Internal Responsibility System in general.

An exception to this general rule would be a committee member's violation of confidentiality rules given in the Act (see subsections 36(3) and 37(1) and (2)). Such a charge would be more legally viable than others and should be assessed using the Division's Compliance and Prosecution policies.

The second area of liability is civil law - can a JOHSC member be sued, especially for negligence through, for instance, the cancellation of a work refusal? On this issue, officers should be wary of what they say since this is not an area in which the Department of Labour has any jurisdiction. Realizing the desire for guidance though, the Division's official opinion is that it seems unlikely that a JOHSC member could be successfully sued. This is based primarily on the fact that the Occupational Health and Safety Act does not impose duties with respect to workplace health and safety on JOHSC's or their members that are comparable to those unequivocally imposed on employers, employees, constructors and suppliers. Clients who, after hearing this opinion, continue to have reservations about their legal status on committees should be advised to seek the advice of their own legal counsel.